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ABSTRACT

In December 1994 the National Law Center on Homelessness and Poverty published an analysis of antihomeless laws and policies in 42 American cities. This report draws on those findings to focus on attempts to shut down or exclude service providers. Searches of the media, telephone interviews with service providers and public interest groups and attorneys, and government information provided the material for the report. The document provides sixty-one examples of local government and resident opposition to the siting or operation of housing and services for homeless people from 36 local jurisdictions involving 50 proposed or existing facilities or services. Of the 61 examples, 21 proposed projects were halted, 3 existing facilities were forced to close, 2 were forced to move, 5 government-run facilities were closed by the jurisdiction, 18 service providers were able to establish or continue the opposed program largely as planned, and 9 cases remained unresolved. The most common approach to exclusion of service providers is the application of zoning and building codes. Even in areas where the service provider was able to overcome local opposition, the need to counter that opposition almost invariably imposed costs in terms of time, effort, and money that could have been used to provide housing and services. "Not in my backyard," or "Nimby," opposition is particularly unfortunate in that opponents' fears about service facilities are unfounded. Neighbors of these facilities frequently come to view them with approval after they have been established for some period of time. (Contains three tables.) (SLD)

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NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

ED 400 353

No Room for the Inn

A Report on Local Opposition to Housing and Social Services Facilities For Homeless People in 36 United States Cities

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December 1995

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NO ROOM FOR THE INN

A Report on Local Opposition to Housing and Social
Services Facilities For Homeless People
in 36 United States Cities

December 1995

Document revised and improved April 1996.

ACKNOWLEDGEMENTS

The National Law Center thanks all of the service providers, legal advocates and government employees who provided information for this report. We also thank Bill O'Neill and Covington and Burling for providing valuable research assistance.

The report focuses specifically on opposition to providers of services for homeless people. Three earlier Law Center reports address the trend toward anti-homeless local actions more generally. They are: Go Directly To Jail, published in December 1991, The Right to Remain Nowhere, published in December 1993, and No Homeless People Allowed, published in December 1994.

The report is the product of a collaborative effort of Law Center staff, interns and board. Rick Herz is primarily responsible for drafting and researching this report, along with Anne Anderson and Laurel Weir. Maria Foscarinis provided drafting and editorial assistance, and oversaw the project. Teresa Hinze provided regular computer and technical support and assisted greatly in the report's final preparation. Eric Ferrero provided editorial assistance.

Rick Herz, Tamar Hagler, Maria Foscarinis, Teresa Hinze and Greg Ernst worked on the 1993 report. Steve Berman, Chrysanthe Gussis, Glenn Manishin and Maria Foscarinis worked on the 1993 report. Greg Christianson, Maria Foscarinis, Carol Wayman and Patrice Harris worked on the 1991 report.

We thank the Public Welfare Foundation, the Butler Family Fund and the Deer Creek Foundation for providing the funding that made this report possible. We are also grateful to our many individual supporters.

P R E F A C E

In December of 1994, the National Law Center on Homelessness and Poverty published No Homeless People Allowed, which analyzed anti-homeless laws and policies in 42 American cities. That report updated and expanded upon two earlier Law Center reports on anti-homeless activities, Go Directly to Jail (1991) and The Right to Remain Nowhere (1993). No Room for the Inn is intended to focus specifically on a subset of this trend: attempts to shut down or exclude service providers.

The National Law Center acquired the information contained in this report from a variety of sources. The Law Center initially learned about the relevant controversies through computer searches of major US newspapers, from culling information from news reports and Handsnet, (a computer information network for the human services and public interest community), from inquiries to local organizations and from unsolicited phone calls and letters. This information was augmented by telephone interviews, primarily of service providers and public interest and pro bono attorneys representing homeless people. Background information was obtained from government documents and from telephone interviews of service providers and advocates.

TABLE OF CONTENTS

Executive Summary....................i

Table I
    Enactment or Enforcement of Anti-Homeless Policies in 1995

Table II
    Enactment or Enforcement of Anti-Homeless Policies in 1994

Table III
    Need and Available Resources

I. Introduction....................1

II. Local Examples....................21
- Alabama....................21
  - Huntsville....................25
- California....................25
  - Berkeley....................25
  - Eureka....................29
  - Napa....................31
  - Novato....................32
  - Roseville....................36
  - San Francisco....................38
  - San Jose....................40
  - San Mateo County....................42
  - Santa Monica....................43
  - Westminster....................46
- Colorado....................47
  - Denver/Aurora....................47
- Connecticut....................51
  - Hartford....................51
- District of Columbia....................52
- Florida....................60
  - Collier County....................60
  - Jupiter/Palm Beach County....................64
  - Miami....................67
- Hawaii....................69
  - Honolulu....................69
- Idaho....................71
  - Caldwell....................71
- Maryland....................73
  - Baltimore....................73
- Massachusetts....................75
  - Littleton....................75
- Minnesota....................76
  - St. Cloud....................76
  - St. Paul....................78
- Nebraska....................80
  - North Platte....................80
- New York....................82
  - New York City....................82

North Carolina....................................85
    Durham..85
Ohio..88
    Cincinnati....................................88
    Cleveland.....................................91
    Portage County................................93
Pennsylvania......................................95
    Philadelphia..................................95
    Tarentum/Natrona/Brackenridge.................98
Virginia..101
    Richmond......................................101
III. Proposed National Legislation................103
Fair Housing Amendments...........................103
Molinari/Bilbray Amendment........................105
McCain/Feinstein Amendment........................106
Budget Reconciliation Bill........................106
IV. Proactive Efforts.............................107
Portland..107
Philadelphia......................................109
San Diego...110
Queens..112
Veterans Administration...........................113
Redmond...114
V. Important Legal Rulings........................115
City of Edmonds v. Oxford House, Inc............115
Turning Point v. City of Caldwell...............116
Western Presbyterian Church.....................117
First Assembly v. Collier County................119
City of Peekskill v. Rehabilitative Support Services....121
U.S. v. Village of New Hempstead................122
Potomac Group Home v. Montgomery County, Md......124
VI. Recommendations...............................125
    Federal Government............................125
    State Governments.............................129
    Local Governments.............................132
    Service Providers.............................133

EXECUTIVE SUMMARY

This report analyzes 61 examples of local government and resident opposition to the siting or operation of housing and services for homeless people--the so-called "Not in My Back Yard" or "Nimby" syndrome. These examples come from 36 local jurisdictions across America and involve 50 proposed or existing facilities or services.[1] The report focuses on examples that have occurred since 1993.[2] It is intended to be illustrative rather than comprehensive, as other examples of the phenomenon abound.

Of the 61 examples of local opposition analyzed: 21 proposed projects were halted (34%), six existing facilities were forced to close (10%), two existing facilities were forced to move (3%), five government-run facilities were closed by the jurisdiction running them (8%), and 18 service providers were able to establish or continue the opposed program largely intact (30%). In the nine remaining cases (15%), the outcome is either ambiguous or the dispute is ongoing.

By far the most common method used by cities and residents to try to exclude service providers is the application of zoning and building codes. This method was found in 31 of the 61 examples analyzed (51%). Of these, four involved changes in a zoning code or building code made specifically to exclude a particular provider. Nine of the examples (15%), involved efforts to prevent the provider from acquiring government funding for the project. Five involved efforts to stop or alter the terms of proposed transfers of federal base-closure property for homeless uses (8%), and five involved lawsuits brought to exclude a proposed project (8%).

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[1] There are fewer facilities and services than there are examples of controversies because some providers were involved in fights to locate their program at more than one site.

[2] This date ensured that the bulk of the sample was of recent vintage and had advanced beyond preliminary stages of the controversy.

Local opponents and cities have tried to preclude or limit those who provide housing and services to homeless people even though demand for those necessary services is high. In fact, in virtually no city analyzed was there a sufficient amount of the type of facility which local opponents or governments tried to exclude. The lack of alternatives highlights the devastating human costs imposed by the delay, limitation and even total exclusion that frequently result from opposition to housing and services. Successful opposition to service providers ensures that many people will not get the housing and services they need to escape from or remain off of the streets, because existing programs are inadequate to meet the need.

It must be emphasized that even in those examples where the service provider was able to overcome local opposition, the need to counter that opposition almost invariably imposed costs in terms of time, effort and money that could have been utilized to provide needed housing and services. In many cases, the opposition actually delayed or limited the operation of the facility.

Moreover, if current legislative initiatives in Congress are enacted into law, the negative impact of local opposition is almost certain to increase. Current proposals to "reform" welfare are based on the notion that state and local governments and private non-profit providers are the appropriate entities to aid their poor residents. However, as this report documents, private providers are often hamstrung in their efforts to serve needy populations. Furthermore, the preclusion of housing and services is frequently the result of actions by local governments--one of the primary entities reform proposals rely on to fill the role now performed by the federal government. The prevalence of Nimby reactions to housing and services for homeless people indicates that many localities might be more interested in moving homeless people than in eradicating homelessness.

Attempts to shut down or shut out service providers are short sighted, counterproductive and inhumane. They deprive homeless people of the housing and services they need to escape homelessness--and to survive. Not only does this exact a horrible human toll on those who cannot obtain services, it merely serves to perpetuate the problem proponents of Nimbyism seek to avoid: people living on our cities' streets. While all of the efforts detailed in the report are unacceptable, some stand out as being particularly egregious. These efforts are conducted by localities which attempt to preclude such services while simultaneously engaging in efforts to criminalize homelessness. Such cities actually penalize people for not being able to obtain the services that the cities themselves have sought to abolish. The five "most exclusionary cities" are:

- Roseville, CA refused to open its armory as a shelter for the winter of 1994-95 as it had each of the previous six years, despite local churches' offer to pay the cost. At the same time, the City began dismantling encampments, discarding property and issuing citations to homeless people living--by necessity--in public places.

- Huntsville, AL harassed homeless people through sweeps, property seizures and citations under loitering and public sleeping laws. The City also selectively enforced zoning and building codes against shelters, forcing them to close. While efforts against homeless people have apparently diminished after a suit was filed, actions against providers have not. As a result two providers have closed and two others have been forced to move.

- Eureka, CA has consistently opposed Humboldt County's efforts to site a winter shelter, as well as efforts to establish permanent shelter. As a result, there will probably be no winter shelter established this year. Eureka, however, has been sweeping people out of public places since the day the winter shelter closed last season and has hired private security guards who discourage homeless people from remaining in downtown areas.

- Cleveland, OH City Councilmembers blocked plans to find alternate locations for the downtown's only large SRO and for a winter shelter, both of which closed without replacement facilities. Cleveland Police, however, drove homeless people from downtown areas to remote industrial locations and left them there.

- Collier County, FL has thwarted attempts by a local church to site a shelter for homeless people at four different locations. In three of those, the County altered applicable code provisions specifically to exclude the facility. Despite totally inadequate shelter space and its own contribution to the problem, the County has conducted sweeps of homeless people's encampments and is currently planning to extend the application of its camping ordinance and to pass a vagrancy ordinance.

Nimbyism is merely one example of a broader, and growing, national trend. Last year, in our report No Homeless People Allowed, the National Law Center documented instances of local government actions aimed against homeless people in 42 United States cities; these actions included sweeps, restrictions on the use of public spaces, restrictions on begging and selective enforcement of generally applicable laws directed against homeless people. This report documents 31 cities which initiated such actions this year; that number does not include continuations of the policies engaged in last year by cities analyzed in No Homeless People Allowed. Five cities stand out as having the "meanest streets" for being particularly hostile to their homeless residents:

- San Francisco, CA has conducted a campaign of harassment against its homeless residents through a combination of neighborhood sweeps, anti-homeless laws and selective enforcement which has resulted in over 27,000 arrests and citations to date.

- Santa Monica's, CA ordinances which ensure there is no public place where homeless people can sleep without fear of being arrested have had their intended effect of forcing many homeless people to leave the City.

- Atlanta, GA discriminatorily enforces a variety of ordinances against homeless people, including its ban on "remaining" in a parking lot, with an eye toward clearing the streets for the Summer Olympics.

- Seattle, WA enforces its sidewalk and trespass laws which prevent homeless people from even sitting down to rest in public downtown areas in an apparently successful effort to keep homeless people away from downtown businesses.

- Santa Ana, CA has enforced an official policy of trying to rid the City of its homeless population since 1988.

Nimbyism harms homeless people by restricting those seeking to aid them. Laws and policies restricting homeless peoples' activities or presence harm them directly. In each case, whether the harm is inflicted directly or indirectly, the damage is severe and the policies unacceptable. Where both types of efforts are undertaken together, the result is especially devastating.

Nimby opposition is particularly unfortunate since the existing evidence indicates that the opponents' fears about attracting homeless people from other locations and about declining property values, quality of life and neighborhood character are unfounded. In fact, neighbors of such facilities frequently come to view them with approval after they have been established for a period of time. One study found that although over a third of neighbors initially had negative reactions toward proposed group homes for mentally disabled people, only 2% retained such attitudes a few years after the homes were established.[3] A similar study found that people who did not live near group homes associated negative impacts with such homes, but that actual neighbors of facilities felt that group homes had a negligible impact in their neighborhood on traffic, property values, home sales, crime, distressing incidents, appearance, safety and the experience of children.[4] Opposition also tends to ignore the economic benefits from jobs, contracts and outside funding that frequently come to a community along with service facilities. Although this makes instances of successful opposition all the more tragic, it also means that Nimby fights are not zero sum games between competitors with differing but worthwhile goals and values. Rather, they are the results of misinformation that could be remedied through education and communication.

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[3] Arens, Diana Antos, "What Do The Neighbors Think Now? Community Residences on Long Island, New York", Community Mental Health Journal, 235, June 1993.

There are some positive examples of proactive steps taken which increase services rather than exclude them. San Diego, California, for example, passed ordinances aimed at making it easier to construct SRO housing. In Queens, New York, a neighborhood that opposed the siting of a homeless shelter worked with the facility once it became clear it was going to be established. At the federal level, the Department of Housing and Urban Development threatened to withhold funding from Philadelphia when that city tried to exclude a transitional facility.

Although Nimbyism is a local phenomenon, there are a number of different bills in Congress which, if passed, would support the efforts of local opponents to social services. Under current law, providers can obtain federal base closure property to establish housing or services. A Senate bill would severely limit service providers' ability to receive such property, and a House bill would repeal it. In addition, the House-Senate Budget Reconciliation Bill would completely repeal Title V of the Stewart B. McKinney Homeless Assistance Act, which allows service providers to receive surplus, excess or underutilized non-base closure federal property. The Senate is also considering a bill which would severely restrict application of the Fair Housing Act, the nation's most important housing discrimination law, in single family neighborhoods.

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[4] Wahl, Otto, "Community Impact of Group Homes for Mentally Ill Adults", Community Mental Health Journal, 247, June 1993.

The report makes these recommendations to government:

Federal

- Congress should reject attempts to limit the availability of base closure and other unused or underused federal property to providers of services to homeless people.
- Congress should amend the Fair Housing Amendments Act to prohibit the exclusion of people simply because they are homeless.
- HUD and DOJ should adopt a civil rights policy statement to further discourage cities from enacting discriminatory policies, and should prosecute all cases of illegal discrimination against service providers.
- HUD should withhold funds from state and local governments which discriminate against service providers, and should include respect for civil rights as a criterion in funding decisions and regulations. Conversely, HUD should establish incentives for states and localities which do remove barriers to homeless services.
- The White House should launch a national education campaign to explain the overwhelming need for such services, address common fears of local residents, and inform interested parties about the protections afforded by the Fair Housing Act and other laws.

State

- State legislatures should limit a locality's ability to exclude a provider if the locality does not already have enough of that type of housing or service to meet the need.

- States should enact legislation to prevent localities from excluding services from areas zoned for single families by using limits on the number of unrelated people who may live together.

- States should require municipalities to draft plans regarding how they intend to meet demands for services--and hold localities to those plans.

- States should provide incentives for localities to permit the siting of services in their jurisdictions.

Local

- Local governments should alter their zoning codes to allow service providers to establish facilities without having to seek a zoning variance.

The report also makes recommendations to service providers. Because every situation is different, however, the report does not recommend one specific course of action.

- Providers must be fully prepared to address the fears and concerns of neighbors with facts and should know their legal rights from the outset. Providers should never underestimate possible opposition.

- Providers need to decide when and how to inform the neighbors. Supplying this information at the earliest possible time may avoid the additional enmity that results when a neighborhood perceives that a provider is trying to "sneak" in. However, it may also give the opposition additional time to organize.

- Providers need to line up as much local support for their project, and the decision makers who support it, as possible, because such decisions frequently are highly political and take a long time to resolve.

- Providers should try to educate the public about why their fears are unfounded. Neighbors who oppose a project during the siting process will frequently become supporters later if the facility ensures that it is a good neighbor.

TABLE I. ENACTMENT OR ENFORCEMENT OF ANTI-HOMELESS POLICIES OR LAWS IN 1995

Last year, in our report No Homeless People Allowed, the National Law Center documented 39 local governments which engaged in sweeps, restrictions on the use of public places, restrictions on begging and selective enforcement of generally applicable laws directed against homeless people in 1994. These are listed in Table II. This Table identifies 30 cities which initiated or enforced policies or laws in 1995; that number does not include continuations of the policies engaged in last year .

	City	Sweeps	Discriminatory Enforcement 1	Public Place Restrictions	Anti-Panhandling	Police Violence
AK	Girdwood	●				
AZ	Phoenix			●		
CA	Concord	●				
	Corte Madera				●	
	Costa Mesa			●		
	Eureka	●				
	Laguna Hills			●		
	Laguna Niguel			●		
	Long Beach			●		
	Roseville	●				
	San Diego			●		
	Tustin			●		
CO	Denver	●				
CT	Hartford				●	
DC	Washington	●				
DE	Wilmington				●	
IL	Chicago					I
MD	Montgomery, Co.				●	
MO	Springfield		●			
MN	Minneapolis				●	
MN	St. Paul				●	
NV	Las Vegas				●	I
NY	New York City					GCP
PA	Norristown	●				
	Pittsburgh				●	
OH	Cincinnati		●	●	●	
OR	Ashland			●		
	Eugene			●		
SC	Columbia				●	
VA	Richmond				●	
VT	Burlington			●		
WI	Milwaukee				●	
LA	New Orleans			P		
TX	Austin			P		

1 This column probably under-reports the incidence of discriminatory enforcement owing to the difficulty in determining whether it has occurred.

P Proposed ordinance, passage seems imminent

I Incident of police violence

GCP Systematic violence by Grand Central Partnership, a private business improvement district

TABLE II. ENACTMENT OR ENFORCEMENT OF ANTI-HOMELESS POLICIES OR LAWS IN 1994

City	Sweeps	Limits on Service Providers	Discriminatory Enforcement 1	Public Place Restrictions	Anti-Panhandling Ordinances
Akron					P, M, T
Alexandria					P, M
Atlanta	●			●	
Baltimore			●	●	P, M
Berkeley			●		P, M, T
Chester Co.				●	
Chicago	●				M
Cincinnati					M
Cleveland			●		
Collier County	●	●			
Dallas	●		●	●	M
District of Columbia		●			P, M
Durham					M
Eureka		●		●	P, M
Ft. Lauderdale				●	P
Green Bay		●			
Huntington Beach	●				
Huntsville	2	2	2	2	
Jupiter		●			
Littleton		●			
Marysville					M
Memphis					P, M, T
Miami	●		2	2	A
New York City	●		●		P
Philadelphia	●				
Portland	●		●		
Raleigh					
Reno					P, M
Sacramento					P, M
San Diego					M
San Francisco	●	●	●	●	M, A(2)
Santa Ana			●	●	
Santa Cruz				●	P, M, T
Santa Monica		●		●	P, M
Seattle			●	●	M
South Lake Tahoe					P
Spokane					M
Tallahassee			●		
Westminster		●			M

1. This column probably under-reports the incidence of discriminatory enforcement owing to the difficulty in determining whether it has occurred.
2. City engaged in appeal in 1994 of pre-1994 court order banning activity.

P Place restriction on panhandling.
M Manner restriction on panhandling.
T Time restriction on panhandling.
A Ban on all panhandling.

TABLE III. NEED AND AVAILABLE RESOURCES

State	City	Number of homeless people/night	Number of shelter beds[1]
AL	Huntsville	560-870	570
CA	Berkeley	1,000+	370
	Eureka[2]	1,250-1,500	330
	Napa	300-530	110
	Novato[3]	2,000-3,000	110/190
	Roseville	200	N/A
	San Francisco	8,000-10,000	2200
	San Jose[4]	15,000-20,000	1200
	San Mateo County	N/A	0/600-900
	Santa Monica	N/A	415
	Westminster[5]	10,000-12,000	975
CO	Aurora	1350	65
	Denver	3360	1000
CT	Hartford	N/A	335/395
DC	Washington	9600	7000
FL	Collier Co.	800-1,200	100
	Jupiter	N/A	0
	Palm Beach Co.	4,000-5,000	250
	Miami[6]	6200	2900
HI	Honolulu	N/A	250
ID	Caldwell	N/A	N/A
MD	Baltimore	2,000-2,400	1460/1760
MA	Littleton	N/A	N/A
MN	St. Cloud	80	50
	St. Paul	1,000-2,000	360-500
NE	North Platte	N/A	30
NY	New York City	50000	25000
NC	Durham	400-500	1500
OH	Cincinnati	1800	700
	Cleveland	5,000-6,000	1000
	Portage Co.	N/A	11
PA	Philadelphia	4750	2500
	Tarentum/Natrona	N/A	N/A
VA	Richmond	4,000-5,000	520

[1] Summer/winter
[2] Numbers are for Humboldt County
[3] Numbers are for Marin County
[4] Numbers are for Santa Clara County
[5] Numbers are for Orange County
[6] Numbers are for Dade County

I. Introduction

Background

The latest data indicates that at least 700,000 people live in the streets and shelters of America at any one time.[1] An estimated 2-3 million people experience homelessness during the course of any given year,[2] and at least 12 million, (6.5% of the American adult population), have been homeless at some point in their lives.[3] Members of families with children comprise 37% of the homeless population.[4] Moreover, roughly 15% of all Americans live at or below the poverty line.[5]

In 1994 the National Law Center reviewed anti-homeless policies in 42 American cities and proactive alternatives in seven others.[6] Virtually none of the cities analyzed in that report had enough emergency shelter space or transitional housing[7] to accommodate their homeless populations. Moreover, all of the cities surveyed suffered from a shortage of affordable housing. Using federal affordability guidelines, the fair market rent of a one-bedroom apartment was not affordable by a person making the federal minimum wage or living on Supplemental Security Income (SSI), or by a one-parent family of three living on Aid to Families with Dependent Children (AFDC), in any city analyzed.[8] The United States Conference of Mayors estimated that 19% of the requests by homeless people for emergency shelter went unmet in 1995 in the 29 cities they analyzed.[9] Cities also identified needs for affordable housing and substance abuse and mental illness treatment as particularly pressing.[10]

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[1] Wright, J. and Devine, J., "Housing Dynamics of the Homeless: Implications for a Count", Amer. J. Orthopsychiat. 65(3), 320, 328 July, 1995; Burt, M., "Critical Factors in Counting the Homeless", Amer. J. Orthopsychiat. 65(3), 334, 335 July 1995.

[2] Burt at 336.

[3] Link, B., et. al., "Lifetime and Five-Year Prevalence of Homelessness in the United States: New Evidence on an Old Debate", Amer. J. Orthopsychiat. 65(3), 347, 353 July 1995.

[4] United States Conference of Mayors, "A Status Report on Hunger and Homelessness in America's Cities: 1995" 2, 1995.

[5] United States Bureau of the Census 1993 data.

[6] National Law Center on Homelessness and Poverty, No Homeless People Allowed, December 1994. That report built on two earlier reports on anti-homeless laws and policies published by the National Law Center, The Right to Remain Nowhere (1993), and Go Directly to Jail (1991).

Opposition to Services: Nimbyism

Clearly, there is an enormous unmet need for housing and social services for homeless and other destitute people. Much of the burden falls squarely upon private, non-profit service providers to supply desperately needed assistance. If current legislative initiatives in Congress are enacted into law, this burden is likely to increase, since contemporary welfare reform proposals are largely based on the notion that state and local governments and private providers are the appropriate entities to provide relief from oppressive social conditions. Tragically, however, governments that are unwilling or unable to provide such services frequently impede private organizations from fulfilling this role. Even where governments do try to provide needed services, some local residents often seek to thwart their efforts. Resident resistance is particularly common in middle and upper class neighborhoods, which tend to offer more intense opposition than less affluent neighborhoods[11].

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[7] Emergency shelters meet immediate, basic housing needs, usually on a short term basis. Transitional shelters are usually smaller, allow longer stays, and afford more intensive work with staffers toward long term solutions to residents' problems. They typically do not accept emergency placements.

[8] No Homeless People Allowed, Table II. Supplemental Security Income is a federal benefit provided under the Social Security Act to blind, elderly, and physically and mentally disabled persons. Aid to Families with Dependent Children is a federal program to aid poor children and their mothers, and in some cases, their fathers. HUD places the affordable rent threshold at 30% of income.

[9] United States Conference of Mayors at 2.

[10] Id.

The tendency of local governments and residents to oppose social services in their neighborhoods is commonly referred to as the "Not in my back yard" or "Nimby" syndrome. As the United States Conference of Mayors has noted, "The NIMBY syndrome is among the greatest obstacles faced by local governments, not-for-profit organizations, and developers to siting and providing emergency shelters, services and permanent affordable housing for low-income families and individuals. Hostility and fear, based often on ignorance, drive many individuals to find pretexts for opposing the siting of a facility. . . The effects of NIMBY have created a crisis of national proportions that calls out for national leadership combined with local efforts."[12] One way the federal government could provide such leadership would be to cut funding to those localities which shut out service providers.[13]

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[11] Beggs, Marjorie, OK in my backyard: Issues and Rights in Housing for the Mentally Ill, 17, 1993; Dear, Michael, "Understanding and Overcoming the NIMBY Syndrome", Journal of the American Planning Association, Vol. 58, No. 3, 288, 293, Summer 1992; Arens, Diana Antos, "What Do The Neighbors Think Now? Community Residences on Long Island, New York", Community Mental Health Journal, 235, 242, June 1993; Hogan, Richard, "Community Opposition to Group Homes", Social Science Quarterly, 442, 445, June 1986. This has at least in part caused social services facilities to disproportionately be sited in less affluent neighborhoods. Dear at 293.

This report documents Nimby opposition to all types of housing and services for homeless people. No category of housing or services seems immune. Rather, Nimby opposition seems based simply on the fact that the services are intended for people without housing, whether or not those people also have other

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[12] U.S. Conference of Mayors, Ending Homelessness in America's Cities, 18-19, July, 1993.

[13] The Recommendations section of this report offers this suggestion in more detail, as well as offering other suggestions for federal, state, and local governments as well as for service providers.

24

problems.[14] This clearly highlights the intensity of the stigma our society attaches to being without a home.

In cases where Nimby opponents succeed in actually stopping or limiting the provision of services and housing, the human costs resulting from the lost facilities are clear. However, even where efforts to site services in the face of Nimby opposition are successful, the fight itself virtually always requires the expenditure of scarce resources, including time, effort, money, good will and political capital. Delay in implementing a program is all too common. Moreover, "neighborhood resistance often has meant that '[facilities] have been built too small, too late, in insufficient numbers or in the wrong places. Or they have been made too difficult, controversial, or expensive to manage.'"[15] This does not take into account the emotional toll vitriolic campaigns against services have on the prospective consumers of those services due to the clear message such campaigns send that the consumers are not wanted or worthy of assisting. All of these factors have a detrimental chilling effect on other organizations which would otherwise seek to establish needed services and housing.

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[14] One observer has noted that services for people with mental illness or "social diseases" such as substance abuse are generally perceived to be the least desirable neighbors. Homeless people, however, tend to be viewed monolithically in that all homeless people are considered by neighbors to be as undesirable as those with mental illness or "social diseases", even though only some homeless people have those problems. Dear at 291.

A similar observation has been noted in the overlapping field of housing for people who are mentally ill, where the intensity of services offered doesn't seem to have an effect on the level of neighborhood opposition. Beggs at 2.

[15] Henig, Jeffrey, "To Know Them Is to . . .? Proximity to Shelters and Support for the Homeless", 75 Social Science Quarterly 741 (December 1994) quoting Popper, Frank, "LULUs and Their Blockage: The Nature of the Problem, the Outline of the Solutions," in DiMento, Joseph and Graymer, LeRoy, eds., Confronting Regional Challenges: Approaches to LULUs, Growth, and Other Vexing Governance Problems 13, 16 (1991).

The ability of Nimbys to stifle efforts to help homeless people is particularly distressing since poll data demonstrate that provision of services to homeless people enjoys wide public support. For example, 65% or more of respondents in one poll supported interventions which would build low cost housing, provide jobs and job training, and treat drug and alcohol problems of homeless people.[16] As many as 81% of all people would be willing to pay more taxes to help homeless people,[17] and Moreover, the support for homeless services appears to be bipartisan[18] and sympathy for homeless people is rising.[19]

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[16] Toro, Paul and McDonnell, Dennis, "Beliefs, Attitudes and Knowledge About Homelessness: A Survey of the General Public", 20 American Journal of Community Psychology 53, 70 (1992).

[17] Business Week/Harris Poll, Business Week, November 1, 1993, p. 35. Other polls have found this figure to be slightly lower, although still a majority. See Toro, Paul and Manrique, Manuel, National Public Opinion Poll, Wayne State University, (data from Spring 1994)(finding the number to be almost 65%); "What Americans Say About the Homeless", Parade Magazine, January 9, 1994 at p. 5 (finding this number to be 64%); Toro and McDonnell at 69-70 (finding the number to be almost 60% and citing 5 other polls which found this number to range between 49 and 59%).

[18] Toro and McDonnell at 73.

[19] Casey, Constance, "One in Six Americans Say They Fear They Could Become Homeless," Newhouse News Service, December 28, 1995.

Common Nimby Concerns

In looking at examples of Nimby opposition to social services, it becomes clear that a few arguments are repeated in a variety of different contexts. Opponents typically assert that a given facility will attract homeless people from other places, and cause property values and business to decline, traffic and crime to increase, and the quality of life to deteriorate. Some of these alleged effects have been studied, at least with respect to certain types of social services facilities.[20] The studies demonstrate that social service facilities do not have negative effects on neighborhoods.

Local opponents of facilities for homeless people frequently argue that new services will attract transient and unwanted homeless people from other places, the so-called "magnet theory." Studies, however, suggests otherwise. A study of homeless people in Chicago found that 70% were either born in Illinois or were residents of Chicago for more than 10 years.[21] Another study of homeless people in 16 cities found them to be not significantly more mobile than other urban residents.[22] A Los Angeles study concluded "[o]ur data belie [magnet theory] myths. The majority of Skid Row men are local residents of long duration. Moreover, those who are recent migrants come to Los Angeles for many of the same sorts of reasons that people have always moved, for example, to cope more effectively with their life situation. Most come in search of employment or to escape a damaging home situation, and hence are seeking a higher quality of life."[23] While those homeless people who do move typically do not do so because they are attracted to new services, they are more likely to be young, healthy and newly homeless than are "stayers." In other words, they are exactly the people for whom swift intervention can "prevent the downward spiral associated with continued homelessness."[24] Since migrants are unlikely to come to a given locality for services but are most likely to benefit from them, the bitter irony of the "magnet theory" myth is that if localities do not want migrant homeless people living on their streets, they would be better off providing more services rather than fewer.

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[20] Although many of the studies did not specifically look at facilities intended for homeless or formerly homeless people, many such facilities are of the type that frequently serve this population, and the studies are therefore instructive.

[21] See Wright, James D., Address Unknown, 69-70, 1989.

[22] Id.

Other common fears are similarly misplaced. A comprehensive review of 58 studies dealing with the neighborhood effects of group homes and treatment facilities of a variety of different types found that while communities are concerned about the effects of group homes on their neighborhoods, their fears about property values, crime and neighborhood character are unfounded.[25] Of the 58 studies reviewed, no study found a totally negative effect. (A lone study suggested a negative effect on property values in certain racial submarkets.)[26] Moreover, communities have accepted these facilities over time, in large part because they are indistinguishable from their neighbors.[27]

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[23] Rahimian, A., Wolch, J., Koegel, P., "A model of homeless migration: homeless men in Skid Row, Los Angeles", Environment and Planning, vol. 24, 1317, 1334, 1992.

[24] Id.

Other studies have reinforced the conclusion that, once established, group homes tend to gain the acceptance of their neighbors because they do not negatively impact the neighborhood and are good neighbors. For example, one commentator has noted that in some instances, property values near facilities increase because the group homes are well maintained or newly renovated.[28] A study found that although over a third of neighbors initially had negative reactions toward proposed group homes for mentally disabled people, only 2% retained such attitudes a few years after the home was established.[29] Ninety-nine percent indicated that they knew of no problems selling neighborhood homes as a result of the group home.[30] More than 10% of the neighbors did not even know they lived near a group home.[31] A similar study of neighbors of group homes for mentally ill people found that the neighbors felt that the homes had a negligible impact in their neighborhood on each of the eight factors studied, including traffic, property values, home sales, crime, distressing incidents, appearance, safety and the experience of children.[32] More than 25% did not even know there was a group home in their neighborhood.[33] The study also found that a control group of people from similar neighborhoods which did not have a group home expected that negative effects in these categories would occur if a home were to be established. These expectations were significantly higher than the negligible effects reported among the group who actually lived near such a home.[34]

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[25] Community Residences Information Services Program (CRISP), There goes the neighborhood, 1990 version. The review included studies analyzing facilities for mentally disabled people, elderly people, neglected children, ex-offenders, drug abusers and other formerly institutionalized or services dependent people. It looked to see if these facilities caused declining property values, increased crime, deteriorating quality of life and loss of local control. Id. While not all of these types of facilities would typically provide services to homeless people, the fact that the studies so overwhelmingly concluded that social services facilities do not produce negative effects is instructive for those considering the effects of facilities which do serve homeless people.

[26] Id. at 91-92.

[27] Id. at 92.

[28] Dear at 290.

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[29] Arens at 239. Arens interviewed the residents of the 15 houses nearest to each of five group homes for mentally disabled people in suburban Long Island, an area with a history of intense opposition to such facilities. Id. at 235, 238.

[30] Id. at 241.

[31] Id. at 243.

[32] Wahl, Otto, "Community Impact of Group Homes for Mentally Ill Adults", Community Mental Health Journal, 247, 254, June 1993.

[33] Id.

[34] Id. at 255-56.

In a study of a 1990 Washington, D.C. voter initiative, one researcher found that "[w]hen other factors are controlled for, precincts housing more shelter beds were more rather than less supportive" of increasing homeless people's access to shelter.[35] The study noted that this finding casts some doubt on the thesis that "proximity [to shelters] sensitizes residents to genuine risks."[36] Although "it would be premature to conclude from this that exposure to shelters actually generates additional support . . . it appears, at the very least, to be compatible with generalized support for further city efforts on [homeless people's] behalf."[37] Thus, the available evidence supports the propositions that facilities do not negatively impact communities, and that neighbors come to accept them after they are established.[38]

Nimby opposition to private providers also makes little economic sense for local governments. Service facilities provide positive benefits in addition to the services provided, such as jobs for local contractors and residents and outside funding to be spent locally.[39] Perhaps more importantly, private providers render expensive, basic services -- traditionally a government obligation -- at little or no cost to the government entity.

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[35] Henig at 751.

[36] Id. at 742, 751.

[37] Id. at 751-52.

[38] Additional research supporting these conclusions has been done in Canada and Scotland. Staff, "Taking Better Care", The Scotsman, 15, August 16, 1995.

[39] Dear at 295.

An example from the District of Columbia is illustrative. A McKinsey & Co. study, "A Cost Effective Solution to Breaking the Cycle of Homelessness" determined that it costs the District of Columbia $3,500 dollars per month to provide for a homeless person.[40] But a private, not-for-profit group, Samaritan Inns (SI), provides transitional and permanent housing for homeless former substance abusers at no cost to the government. Moreover, SI provides its services substantially more cost-effectively that the District. It can house a person in its transitional housing for $789 per month, and pays nothing for a person in its permanent housing, since residents pay all operating costs. Additionally, without the type of housing SI provides, residents would be likely to relapse, thereby requiring a stay of at least 28 days at a government treatment center, (if the person could get in), at a cost of $6,720 per month. This does not account for the taxes paid by employed recovering substance abusers that could not be paid by homeless, current abusers, and the enormous human and social costs associated with substance abuse and homelessness.[41] Despite the obvious benefits SI provides for the

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[40] Samaritan Inns v. District of Columbia, No. 93 cv 2600 RMU, 45-47 (D.D.C. June 30, 1995).

[41] Id.

District, in 1993 the District tried to stop Samaritan Inns' construction of long term housing for former substance abusers.[42]

Zoning and the Fair Housing Act

In many of the examples in this report, much of the opposition is focused on zoning hearings. Existing zoning codes frequently preclude a proposed project.[43] In a typical zoning scheme, when a proposed project is not permitted by the zoning code, a developer must acquire a variance or conditional use permit from a zoning board in order to proceed with the project. Usually, neighbors must be informed and public hearings are held. Because providers so regularly need to obtain variances in order to proceed with projects, opposition strategies have most commonly focused on the zoning variance process.[44]

The zoning variance process has frequently both sparked opposition and provided a forum for it.[45] The notification requirements ensure that opponents have adequate time to organize opposition. Moreover, a scheduled hearing provides a focal point around which Nimby opponents can rally support and the hearing itself provides a mechanism through which the opposition can halt a project.

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[42] See discussion of Samaritan Inns in District of Columbia Section below.

[43] Exclusionary zoning takes a variety of different forms, as discussed below.

[44] Dear at 290.

[45] Id. at 290-91.

Indeed, the very fact that a provider has to get a variance may stimulate opposition among neighbors who would not otherwise be opposed. People who oppose making exceptions to generally applicable laws may resent a request for a variance because they perceive it to be a request for special treatment. Moreover, neighbors rightly see zoning codes as protecting the integrity of neighborhoods by screening out incompatible uses. The fact that the existing law requires a zoning variance may suggest to residents that the use is indeed incompatible, predisposing neighbors to disbelieve even compelling evidence to the contrary.

However, the absence of a given type of service facility from the list of allowable uses does not necessarily reflect an intention to exclude that type of facility as an incompatible use. Many types of social services facilities, such as community-based residential facilities, are relatively new types of developments.[46] Therefore, their exclusion may reflect an outdated zoning code in which the drafters did not consider the question rather than a conscious attempt to exclude the use. Similarly, some limits which affect service providers were enacted with other perceived evils in mind. For example, some limits on the number of unrelated people who can live together may be a product of attempts to exclude communes in the 1960s and '70s.[47] Of course, many laws are intentionally exclusionary.

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[46] Id. at 296.

Exclusionary zoning provisions take a variety of different forms. Examples of these are detailed in the report:

- Some or all types of social service facilities may simply not be included in the list of allowable uses, either in any zoning district, (as in San Jose, CA and Jupiter, FL), or in some, usually the most suitable, types of zoning districts. Such conflicts are particularly common when providers seek to establish group facilities housing unrelated adults in residential areas.[48]
- Zoning codes can also exclude service providers indirectly. One typical way is through limits on the number of unrelated people who can live together. Examples of localities with such limits detailed in the report include Washington, D.C. and Caldwell, ID.
- Some cities have laws which allow service providers in a given zoning category, but preclude providers from establishing a new facility within a given distance of an existing provider or certain other "protected uses" such as a school.[49] Typically, cities argue such ordinances are justified "[i]n order to prevent the concentration of [facilities] in a neighborhood and to avoid impacting

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[47] Lauber, Daniel, "Group Think", Planning, 11, 12 (October 1995).

[48] Dear at 290.

[49] For example the Tarentum, PA Code states:
[N]o group residence or family boarding home may be located within the same block or within 1,000 feet, whichever is more, of a similar facility, nursing or convalescent home, or institutional facility. Tarentum Borough Zoning Code §6-604.1(2).

The St. Paul, MN Code states:

> [a] drop-in center shall be located at least six hundred (600) feet from any other drop-in center or from any "protected use" defined as: a day care center where the day care center is the principal use; a public library; or an educational facility such as: a school . . . or an art, science or children's museum. City of St. Paul Ordinance No. 95-350.

existing residences."[50] Examples of such localities detailed in the report include St. Paul, MN, Washington D.C. and Tarentum, PA.

- In other instances, cities either willfully misused or changed their zoning or building codes in order to exclude service providers. For example, the District of Columbia revoked Samaritan Inns' building permit despite the fact that it knew or should have known that SI was entitled to use the property for SRO housing as a matter of right.[51] Collier County, FL and St. Paul, MN passed ordinances specifically designed to scuttle proposed projects.[52] The City of Huntsville, AL discriminatorily enforced its zoning laws in a concerted effort "to discourage the establishment and continued operation of homeless shelters in residential areas of the city."[53]

Zoning provisions which exclude residential service providers for disabled people raise issues under the Fair Housing Amendments Act of 1988.[54] The Act prohibits discrimination with respect to "dwellings."[55] While homelessness is not a category protected under the Act, many homeless people are handicapped or perceived to be handicapped within the meaning of the Act and would be protected on that basis.[56]

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[50] Tarentum Borough Zoning Code §6-604.1(2).

[51] See discussion of Washington, D.C. in Local Examples section of report.

[52] See discussions of Collier County, FL and St. Paul, MN in Local Examples section of report.

[53] Church v. City of Huntsville, CV-93-C-1239-S, Preliminary Findings of Fact and Conclusions of Law, 4 (N.D. Ala. Sept. 23, 1993), vacated and remanded, 30. F.3d 1332 (11th Cir. 1994). See discussion of Huntsville, AL in Local Examples section of report.

[54] 42 U.S.C. 3601 et. seq. (Title VIII of the Civil Rights Act of 1968, as Amended in 1988). The Supreme Court has recently ruled that one type of exclusion, limits on the number of unrelated people who can live together, does not fall within the Fair Housing Act's exemption for "restrictions regarding the maximum number of occupants permitted to occupy a dwelling," holding that the exemption only exempts restrictions that apply to all occupants, whether related or not. City of Edmonds v. Oxford House, Inc., No. 94-23, slip op. (U.S. S.Ct., May 15, 1995). See discussion in Important Legal Rulings section of report.

The Act applies to both public and private entities, and covers a multitude of activities which make housing unavailable to individuals with disabilities.[57] Of the activities covered, land use and zoning is by far the most important for those concerned about Nimby-based exclusion of service providers, since so many Nimby fights center around exclusionary zoning codes.

Impermissible discrimination based on disability can be shown in three ways under the Act. Intentional discrimination, conduct which has a disparate impact on disabled individuals, and a refusal to make reasonable accommodations all constitute impermissible discrimination.[58] Intentional discrimination includes actions which are taken at least in part because of the disability.[59] This includes actions motivated by stereotype as well as those motivated by malice.[60]

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[55] 42 U.S.C. Section 3604. Therefore, non-residential facilities are not covered. Schonfeld, Robert, et. al. "Using the Federal Fair Housing Act to resolve land use and zoning disputes" at 3. The Americans with Disabilities Act, however, applies to non-residential facilities and contains some provisions similar to those in the Fair Housing Act. Id. HUD regulations specifically state that homeless shelters are "dwellings" covered by the FHAA. 24 CFR Section 100.201. See discussion of Turning Point v. City of Caldwell, Idaho in Important Legal Rulings section of report.

[56] The term "handicap" covers persons with disabilities which prevent them from performing one or more of life's major activities, as well as those perceived to have such a disability. Recovering alcoholics and substance abusers are covered, but current users are not. Id. at Section 3602(h)(1)-(3); See discussion of Turning Point v. City of Caldwell, Idaho in Important Legal Rulings section of report.

[57] 42 U.S.C. 3601 et. seq.

Disparate impact discrimination occurs when a law places greater burdens on disabled people than on non-disabled people and the government cannot justify those greater burdens.[61] Laws or policies can have a disparate impact on disabled people without specifically referring to disabled people in any way.[62] Impermissible discrimination also includes refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person equal access to a dwelling.[63] This means that local governments have to reasonably accommodate the needs of handicapped people in the application of their zoning codes, even if the code does not intentionally discriminate against or have a disparate impact on disabled people.[64]

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[58] Schonfeld at 7.

[59] Id.

[60] Id.; United States v. City of Taylor, 872 F.Supp. 423 (E.D. Mich. 1995).

[61] Schonfeld at 9; Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926 (2d Cir. 1988).

[62] Schonfeld at 9.

[63] 42 U.S.C. 3604(f)(3)(B).

[64] For example, a court held that a city violated the Act by refusing to allow a service provider to substitute side yard for rear yard in meeting a rear yard zoning requirement. United

As the above discussion makes clear, zoning laws which exclude service providers frequently can be challenged under the Fair Housing Act. Providers seeking to establish or continue to run facilities need to be aware of both the types of exclusionary laws they may face and what protections the Fair Housing Act may afford. This information can then be used to frame the debate, and if necessary, to bring suit.

Federal Base Closure and Surplus Property

Two separate laws make federal surplus property available to providers of services to homeless people. Since a significant number of providers have gained or attempted to gain access to federal surplus property under these laws, and since this frequently sparks Nimby opposition, many of the examples in the report involve federal surplus property.

The Base Closure Community Redevelopment and Homeless Assistance Act (BCCRHAA) makes property available on closing military bases to non-profits, at no cost, to be used as facilities to assist homeless persons. The property may be used for permanent and transitional housing, and for facilities which provide health care, job training, substance abuse treatment, child care and food distribution and storage services. To obtain property, non-profits apply to their Local Redevelopment

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States v. City of Philadelphia, 838 F.Supp. 223 (E.D.Pa. 1993), aff'd 30 F.3d 1488 (1994). See discussion of Philadelphia, PA in Local Examples section of report.

Authority (LRA), (the local entity responsible for redeveloping the base), which is required to consider the needs of homeless persons when developing their re-use plan for the base. To ensure that the needs of homeless people are not ignored, the Department of Housing and Urban Development (HUD) must review and approve the re-use plan. In so doing, HUD verifies that the LRA balanced the needs of homeless persons with economic redevelopment needs before any base property can be turned over to the LRA. If it did not, HUD can reject the plan. In addition to making base property available, the LRA may also choose to assist homeless persons in other ways, such as setting aside jobs for homeless persons or providing money for services.[65]

Another law, Title V of the Stewart B. McKinney Homeless Assistance Act[66], mandates that excess or surplus non-base closure federal property be made available to providers of services for homeless people. HUD must survey federal property regularly and publish a list of suitable property in the Federal Register. Property that is excess to each agency's needs, is surplus because it cannot be used by any agency, or is currently underutilized is available for transfer. Providers submit applications directly to the Department of Health and Human

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[65] The Base Closure Community Redevelopment and Homeless Assistance Act, Pub.L.No. 103-421, 108 Stat. 4346 (1994). Prior to October 1994, property at closing bases was available to providers of homeless services under the Stewart B. McKinney Homeless Assistance Act.

[66] 42 U.S.C. Section 11411 (1992).

Services (HHS), and homeless uses are given top priority. Non base closure Department of Defense property, and bases which were identified for closure prior to 1994 and which elected to be transferred under Title V are distributed under that law rather than BCCRHAA.[67]

II. Local Examples

ALABAMA

Huntsville

There are approximately 570 shelter beds in Huntsville[68]. A study completed in June of 1991 found there to be 560-870 literally homeless people residing in Huntsville at any given time, with between 480 and 720 of them living in various shelters[69] and 41 living in transitional housing for families[70]. Statistics indicate that the shelters are sometimes filled to overcapacity, and there are approximately 80 to 150 people sleeping in places not ordinarily meant for human habitation at

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[67] At least one court has ruled that local exclusionary zoning codes are inapplicable to Title V property since HUD regulations specifically exempt Title V lessees from local zoning codes. See discussion of U.S. v. Village of New Hempstead, N.Y., 832 F. Supp. 76 (S.D.N.Y.) in Important Legal Rulings section.

[68] City of Huntsville Comprehensive Housing Affordability Strategy (CHAS), Fiscal Year 1994 at p. 21.

[69] Id. at 28. Citing The Magnitude and Demographics of Homelessness in Huntsville, University of Alabama, June 1991.

[70] Id.

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any given time[71]. The City acknowledges that the shelters are usually at capacity and that there is a need for additional emergency shelter beds[72]. The City also acknowledges that there is an insufficient supply of transitional and affordable housing, SRO's, boarding houses and halfway houses for recovering substance abusers[73].

In June of 1993, the City of Huntsville began selectively targeting shelters and halfway houses for building code and zoning violations.[74] The City also instituted intensive efforts to remove homeless people from the City by conducting sweeps, seizing property and by using the police to harass homeless people based upon their homeless status, primarily under loitering and public sleeping and urination laws.[75] In response to these efforts, private providers opened a temporary shelter to house some of the displaced population. The shelter was closed, however, after the City cited it under the zoning code, because the area was zoned for one and two family residences only.[76]

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[71] Id. at 29. Citing The Magnitude and Demographics of Homelessness in Huntsville, University of Alabama, June 1991.

[72] Id.

[73] Id. at 28-31, 45.

[74] National Law Center on Homelessness and Poverty, No Homeless People Allowed, 7-10, December 1994, Hereinafter "No Homeless People Allowed"); Church v. City of Huntsville, CV-93-C-1239-S, Preliminary Findings of Fact and Conclusions of Law, 4 (N.D. Ala. Sept. 23, 1993), vacated and remanded, 30. F.3d 1332 (11th Cir. 1994).

[75] No Homeless People Allowed; Church, Preliminary Findings of Fact and Conclusions of Law at 2-3.

On September 23, 1993, a federal District Court granted the homeless plaintiffs a preliminary injunction barring the City from using zoning or building codes to close private shelters, absent a clearly demonstrable, imminent danger[77], and from removing homeless people from the City and harassing or arresting class members for sleeping or gathering in public places solely because of their status as homeless persons.[78] The Court did so because it held that the City "is under a constitutional duty not to discriminate against [the class] because of their status."[79] The City appealed to the Eleventh Circuit, which vacated the injunction without endorsing the constitutionality of the City's actions.[80] The trial court subsequently dismissed the case.[81]

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[76] Church v. City of Huntsville, 30 F.3d 1332 (11th Cir. 1994).

[77] Church, CV-93-C-1239-S, Preliminary Injunction Order (N.D. Ala. Sept. 23, 1993).

[78] Id.

[79] Church, Preliminary Findings of Fact and Conclusions of Law at 4.

The City continued to harass homeless shelters and group homes by discriminatorily targeting them under the zoning and building codes after the dismissal of the case.[82] Since the City's campaign began, two service providers, one which provided housing specifically for recently released prisoners with AIDS who had nowhere else to go and the other a home for homeless people, have been forced to close as a result of the City's enforcement actions.[83] In addition, two other homeless shelters have been forced to move to an area near the City dump. One of those may soon close as a result of financial difficulties, caused at least in part by the City's efforts to make it more difficult for them to receive grant money.[84] The City has also recently used the zoning and building codes to harass two other group homes for homeless recovering substance abusers.[85]

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[80] Church, 30 F.3d 1332 (11th Cir. 1994). The Court of Appeals found that the plaintiffs did not have standing to enjoin enforcement of the City's building and zoning codes and that they were unlikely to win on the merits of their other challenges since they were unlikely to be able to make the necessary showing that any actions taken were the official policy or custom of the City. Id.

[81] No Homeless People Allowed at 9. The Court ruled that plaintiffs would be unable to make the showing required by the Court of Appeals that the actions were the official policy or custom of the City. Id.

[82] White, Mitchell, Freeman, Hollingsworth & White, (telephone interview), November 8, 1995. The City, however, essentially discontinued its harassment of homeless individuals, in part because of political backlash, and in part because the plaintiffs would be able to prove harassment was an official policy of the City if they decided to resume it. No Homeless People Allowed at 10.

[83] Id.

[84] Id.

CALIFORNIA

Berkeley

There are over 1,000 homeless people living in the City of Berkeley, with only 263 emergency shelter beds and room for 107 people in transitional housing to meet the need.[86] Ten percent have AIDS or related diseases,[87] but there is currently no AIDS-designated housing in Berkeley.[88]

Resources for Community Development, a local non-profit, planned to rehabilitate a six-room facility to serve 12 recently homeless, HIV positive people and applied to the City for a portion of the City's federal Community Development Block Grant money and for a grant from the Red Cross.[89] A small group of politically well connected neighbors, however, argued that property values would decrease and traffic would increase if the facility were opened.[90] RCD then scaled the plans back to only accommodate six people in the facility, but the opponents argued that the project was too expensive to justify the expenditure of part of the CDBG money.[91] Opponents wrote to the Red Cross urging them to withdraw their share of the funding. Despite this, the Red Cross preserved its funding of the project after receiving letters from affordable housing organizations and neighborhood supporters of the project.[92] In the Spring of 1995, however, the City decided not to fund the facility, despite the fact that the opposition to it consisted of only a small number of neighbors and that there were a large number of other neighbors who did support the project.[93] As a result, plans for that site had to be abandoned.[94] The Mayor, an opponent of the project, did create an AIDS Housing Task Force in the wake of the controversy. The Task Force is supposed to come up with a plan for AIDS housing in December of 1995. In the meantime, RCD has won a $400,000 grant from HUD to provide such housing, despite the fact that a resident wrote to HUD opposing the grant. RCD is hopeful that they can work with the Mayor to find a new site in Berkeley.[95]

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[85] Id.

[86] City of Berkeley Consolidated Plan, Chart: "Homeless Populations and Subpopulations" 1995.

[87] Id.

[88] Emanuel, Kate, and White, Isabelle, Resources for Community Development, (telephone interview), November 14, 1995.

[89] Iglesias, Tim, "NIMBY Hot Spots", Shelter Partnership: Homeless Reporter, 7, Summer 1995; Emanuel and White.

[90] Iglesias; Emanuel and White.

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[91] Emanuel and White. Of course the project would have been more cost effective if it was to have 12 residents. Even so, advocates argue the cost was reasonable for the services that were to be provided. Opponents suggested other, cheaper alternatives, but they did not incorporate the necessary level of care. Id.

[92] Iglesias.

[93] Emanuel and White. Some neighbors went so far as to hold fundraisers for the facility and to take out ads in a local paper supporting it. Id.

[94] Id.

In July of 1992, neighbors organized to oppose RCD plans to convert the Bel Air hotel in downtown Berkeley into a 35-room affordable permanent housing project for formerly homeless people.[96] The project utilized City funds.[97] Opponents circulated newsletters and petitions arguing that the site's location near liquor stores was inappropriate, as was the failure to provide on-site addiction and mental illness services. They also filed suit against RCD and the City to stop the project[98]. The suit was unsuccessful.[99] In response to the filing of the suit, housing advocates filed a complaint with HUD against the residents, and HUD conducted an investigation to determine whether the neighbors had violated the Fair Housing Act.[100] This investigation was highly controversial because many people believed that the neighbors' actions constituted protected speech under the First Amendment.[101] In August of 1994, HUD concluded that the First Amendment protected the neighbors' speech and dropped the investigation.[102] The Bel Air opened in June of 1995 and is currently fully occupied. The neighbors' opposition, however, did delay the project by about 6 months and cost RCD a significant amount in legal fees.[103]

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[95] Id.

[96] Lawless, Marianne, Housing Rights, Inc., (telephone interview), November 17, 1995; MacDonald, Heather, "Free Housing Yes, Free Speech No", Wall Street Journal, August 8, 1994, B6: U.S. Department of Housing and Urban Development, "Today's FOCUS at HUD", August 22, 1994; Gugliotta, Guy, "ACLU Alleges Free Speech Violations in HUD Probes", Washington Post, August 17, 1994, A20.

[97] Lawless.

[98] MacDonald.

[99] Emanuel and White.

[100] Lawless; MacDonald. The advocates also filed a complaint against the City, which had sought to impose requirements on the Bel Air project it did not on other developers, such as review of leases, public notification and neighborhood input. Lawless.

In January of 1995, the City of Berkeley circulated draft "Public Notification Requirements" which would require any agency using city funds to go through a public notification process before the City Council could approve use of City funds. If enforced, this could have a devastating effect on providers seeking to establish new services. The process contains an indefinite period for public comment which could be used by Nimby opponents to delay projects past deadlines set by other funding sources.[104]

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[101] MacDonald; Gugliotta; Editorial, "HUD's Thought Police", Wall Street Journal, A12, August 23, 1994.

[102] Achtenberg, Roberta, "Sometimes on a Tightrope at HUD", Washington Post, A17, August 27, 1994; "Today's FOCUS at HUD"; "HUD's Thought Police". HUD also issued guidelines for Fair Housing Act field investigators in order to avoid potential infringements on First Amendment rights. Editorial, "HUD Gets the Message, Washington Post, A28, September 3, 1994.

[103] Emanuel and White.

[104] City of Berkeley Supplemental Public Notification Requirements, (1995); Lawless; Lawless, Marianne, (Written Comments to Steve Barton, City of Berkeley Community Development Department, Regarding Supplemental Public Notification Requirements), February 7, 1995; Crispino, Rick, Bonita House, (Written Comments to Steve Barton, City of Berkeley Community Development Department, Regarding Supplemental Public

Eureka

There are 1,250-1,500 people who are homeless in Humboldt County at any one time. There are only 328 emergency and transitional beds to meet this need. The County has cut its General Relief payment by approximately half in the last three years.[105]

In the winter of 1993-94, Humboldt County decided to site a winter shelter at the local rescue mission in the City of Eureka. To do so, the County utilized a law which allowed it override a local zoning code in an emergency. Eureka filed suit in Humboldt County Superior Court to limit the mission's temporary expansion and further requested that the mission be shut down entirely, arguing that the County did not have authority to override the zoning code and that the mission was not in compliance with the code. The County prevailed[106]. The City, however, was successful in pressuring the County not to sustain the temporary expansion for a longer period of time.[107] The housing plan which Eureka filed with the State was rejected as a result of these actions.[108] The County set up a winter shelter at another site for the winter

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Notification Requirements), February 14, 1995.

[105] MacGregor, Bonnie, Humboldt Women for Shelter, (telephone interview), November 29, 1995.

[106] Turner, Jan, Redwood Legal Assistance, (telephone interview), November 17, 1995; No Homeless People Allowed at 12-15.

[107] Turner.

[108] No Homeless People Allowed at 13.

of 1994-95. Neighbors, with the support of the City, filed suit alleging that the shelter was a public nuisance. After the County agreed to hire 24-hour security guards, which doubled the cost of operating the shelter, the suit was settled.[109] The County currently is considering establishing shelter, however, it may not do so unless it can get the City to agree to a proposal by early December of 1995 because it wants to avoid another fight with Eureka.[110]

Despite its own contribution to the lack of shelter space, the City of Eureka has been actively criminalizing homelessness by enforcing ordinances against camping.[111] In addition, on April 1, 1995, the day Humboldt County's winter shelter closed for the season, the Eureka Police Department began to clear or "sweep" homeless people out of parks, abandoned buildings and private property.[112] A couple of people were given citations, but most of the camps had been vacated before the police arrived.[113] The City has continued to conduct sweeps, and has also torn out public benches and hired private security guards to discourage homeless people from remaining in Eureka's downtown.[114]

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[109] Turner.

[110] Id.

[111] No Homeless People Allowed at 12-14. The City also revised its camping ordinance to better define "camping" in an effort to ensure that the law would pass constitutional muster. City of Eureka Ordinance No. 573-C.S. July 7, 1994, Municipal Code Section 5-2.01; City Council Of Eureka, Agenda Review, Re: Bill No. 619-C.S. July 5, 1994.

[112] Smith, Scott T., "Police sweep illegal 'camps'", The Times-Standard, A3, April 11, 1995. The Chief of Police explained the policy by declaring "[a]s long as I'm chief, no one's going to be able to hide out in the wooded areas and come in and pillage the town." Id.

Napa

Approximately 300-530 homeless people live in Napa.[115] There is shelter space for only 75 people, and an additional 10-15 families are housed in local motels.[116] Napa also has an acute shortage of affordable housing appropriate to the needs of homeless people.[117]

The Napa County Council for Economic Opportunity proposed to convert a closed homeless shelter into SRO housing for 8-10 very low income people recovering from mental illness and substance abuse. One citizen opposed the plan at a planning commission hearing, citing the fear of declining property values. Although the planning commission approved the plan unanimously in November of 1994, one City Councilmember, concerned about who would reside in the housing and its effects on the neighborhood, succeeded in getting the City Council to review the commission's decision.[118] Some residents testified against the proposal, arguing that it was not needed and was in a bad location and that it contradicted the area's commitment to slow growth. None of the opponents were immediate neighbors to the project.[119] The City Council passed an ordinance designed to facilitate the creation of SRO housing,[120] and also approved the Council for Economic Opportunity's proposal to convert the old shelter.[121] Residents were scheduled to move into the SRO on November 13, 1995.[122] Some residents are currently mounting a recall campaign against four councilmembers who voted for the SRO and also supported a plan to construct a mall.[123]

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[113] Stoepler, Jim, Redwood Legal Assistance, (telephone interview), June 12, 1995.

[114] Turner.

[115] Ward, Dan, Napa County Council for Economic Opportunity, (telephone interview), November 8, 1995; City of Napa Municipal Code, Chapter 17.85.020, January 17, 1995, citing 1993 City of Napa Comprehensive Housing Affordability Strategy.

[116] Ward.

[117] City of Napa Municipal Code, Chapter 17.85.020 Legislative Findings.

Novato, Hamilton Army Airfield

There are 2,000-3,000 homeless people in Marin County. There are only approximately 110 shelter beds to serve this population, with another approximately 80 beds added in the winter.[124]

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[118] Id.; HomeBase, "Memorandum to Regional Steering Committee on Homelessness and Housing, Re: NIMBY Hot Spots", 4, March 10, 1995.

[119] Ward.

[120] City of Napa Municipal Code, Chapter 17.85.010-030. The ordinance allowed creation of up to 60 units of SRO housing per acre, with the possibility of receiving a variance for up to 120 units. Id. at 17.85.030(A). Moreover, all of the units in a project have to be affordable for low and very low income people. Id. at 17.85.030(F).

[121] Ward.

[122] Id.

[123] Id.

In 1993, the City of Novato sued Marin County and Catholic Charities in federal court in order to prevent them from establishing a homeless shelter at Hamilton Army Airfield. The City argued that the proposed site was on a floodplain and the City would be liable for damages if it flooded. The City also argued the site was next to a Little League field and across from homes, and that the shelter would scare off a developer who planned to build homes and commercial properties on the base.[125] Additionally, the City argued the site might be a protected wetland and have toxic contamination from the base, and requested that the court enjoin the shelter pending environmental review. The City proposed an alternative site on the base for the shelter.[126] The suit was dropped when the City and County reached an agreement whereby the shelter would be placed at the City's suggested alternative site. The agreement also required that the shelter be fenced in, that people be screened before being bused there from other parts of the county, and that only those people willing to commit to treatment be admitted. The shelter was to have a two-year time limit, after which both sides had to agree to an extension.[127] Plans to build the shelter, however, were eventually dropped.[128]

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[124] Pagett, Betty, Ecumenical Association for Housing, (telephone interview), November 14, 1995.

[125] Staff, "Novato sues to block Hamilton shelter", Marin Independent Journal, August 11, 1993.

[126] Id.

Other property at Hamilton Army Airfield, as well as some off-base Navy housing, came up for distribution as surplus federal property in September of 1994. Advocates for affordable housing and homeless services proposed that some of the property be used for a permanent shelter with support services to replace an existing temporary shelter on the property, and for transitional housing. They also proposed the reuse of an apartment complex as affordable housing.[129] These proposals sparked some opposition from nearby neighborhood associations, who wanted a decrease in the amount of transitional housing because they felt, (unjustifiably according to a local advocate), that Novato has more than its share.[130] Some were also opposed to the use of the apartment complex for affordable housing and argued that the existing housing was in poor condition and should be demolished.[131] They also wanted to ensure that none of the off-base housing in their neighborhoods was converted to these uses.[132]

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[127] Peterzell, Paul, "Homeless center OK'd at Hamilton", Marin Independent Journal, October 15, 1993.

[128] Pagett.

[129] Id.

[130] Id.

[131] Iglesias at 8.

[132] Pagett.

Advocates organized a concerted community education effort to persuade the local opponents of the need for the proposed projects and their suitability in the area. Marin Family Action organized people who needed affordable housing to represent themselves at hearings and through letters. Opponents and decision makers were also taken to see other affordable housing and homeless services in the area. All of this was extremely effective in alleviating the concerns of opponents and decision makers.[133] In October of 1995, the Hamilton Reuse Authority voted to approve a plan very similar to that originally proposed. The plan calls for a new permanent shelter with services and for the existing apartment complex to be used for 718 units of affordable housing, 60 units of which will be transitional housing.[134] Service providers are now submitting letters of interest to HHS to obtain the property at no cost under Title V of the McKinney Act. The providers are optimistic that they will get the property because they have the support of the Navy, and the Reuse Authority, which includes the Novato City Council.[135] The base is scheduled to be vacated at the end of 1996.[136]

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[133] Id.

[134] Id.

[135] Id.

[136] Id.

Roseville

There are over 200 homeless people in the vicinity of Roseville, (which is near Sacramento), and that number has been increasing rapidly in recent months. Homestart is the only provider of shelter in the county and its facilities are insufficient to meet the need.[137]

The City of Roseville refused to open its armory for use as a winter shelter for single homeless people for the winter of 1994-95, despite the fact that it had opened the shelter each of the previous six years. The City claimed that it did not have the money necessary to open the armory, but local churches offered to pay the cost.[138] According to a local advocate, the City really refused because it does not want homeless people in Roseville.[139] Starting in January of 1995, Homestart took in what singles it could, (despite the fact that it was primarily a family shelter), and tried to distribute tents to other homeless people. On January 10, major flooding washed away all of the possessions of many homeless people, as well as flooding some residents out of their houses. The City offered assistance to those flooded out of their homes, but continued to refuse to open the armory for those already homeless,[140] apparently drawing a distinction between "deserving" and "undeserving" homeless people.

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[137] Magennis, Charlotte, St. Vincent de Paul Society, (telephone interview), November 16, 1995.

[138] Id.

[139] Id.

[140] Id.

Homestart itself has also faced significant Nimby pressure. In June of 1995, the Homeless Forum, an anti-homeless neighborhood organization, picketed Homestart's facility in order to try to get them to close. Moreover, the City has harassed the shelter with building and fire code inspections and have limited the number of people Homestart can shelter under those codes.[141]

In August of the 1995, the City instituted a new crackdown policy toward the local homeless population. The Roseville Police dismantled encampments and threw property away. They also issued a number of citations and warnings for trespassing and other violations.[142] According to a police sergeant, the policy was specifically intended to send the message that homeless people should find another city.[143] This intent led Sacramento city officials, afraid that Roseville's actions are directing homeless people toward that city, to criticize the policy.[144]

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[141] Id.

[142] Campos, Art, "Keep moving, Roseville says", The Sacramento Bee, B1, B3, August 22, 1995.

[143] Id.

[144] Griffith, Dorsey, and Hicks, Larry, "Jammed Roads, Flooding, Dirty Air are Among the Costs When Communities Go Their Own Way", Sacramento Bee, A1, October 29, 1995.

San Francisco

San Francisco has approximately 8,000-10,000 homeless people at any one time.[145] There are approximately 1,400 emergency shelter beds[146] and 800 transitional units to meet the need.[147] Approximately 10% of all requests for emergency shelter went unmet in 1994.[148] The lack of affordable housing is a major cause of homelessness in San Francisco.[149]

Food Not Bombs (FNB) began distributing free food to homeless and poor people on the streets of San Francisco in 1988. In August of that year, the City began arresting FNB volunteers in a concerted effort to stop Food Not Bombs' activities. This effort has continued to the present.[150] In 1991, the City got a court order prohibiting Food Not Bombs from distributing food to homeless people without a permit.[151] In FNB's seven years of serving food in San Francisco, there have been approximately

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[145] City of San Francisco Board of Supervisors, Resolution No. 214-95, March 20, 1995.

[146] Mayors' Report at 69.

[147] Board of Supervisors at 2.

[148] Mayors' Report at 69.

[149] Mayor's Report at 38.

[150] McHenry, Keith, Food Not Bombs, (telephone interview), December 8, 1995.

[151] "Twelve Arrested for Serving Food to Homeless", San Francisco Chronicle, September 3, 1993 at D5. The Court order was subsequently upheld by the United States Court of Appeals for the Ninth Circuit. McHenry v. Agnos, 1993 U.S. App. Lexis 1356 (9th Cir. 1993).

1,000 arrests of FNB volunteers and only one conviction.[152] There have also been allegations of police use of excessive force associated with some of these arrests.[153] In early 1995, Food Not Bombs' leader, Keith McHenry, was facing a trial on 47 misdemeanor and 2 felony charges for his efforts to serve food. If convicted, he could have gone to jail for life under California's "Three Strikes, You're Out" law. However, on February 8, 1995, a court accepted a plea bargain under which McHenry received 1 year probation which would not be revoked for future arrests for serving food.[154] Food Not Bombs has had permits to serve food denied by the City on 135 occasions, and has had 13 vans seized by City police and not returned.[155] Amnesty International and the United Nations are investigating the City's policies toward Food Not Bombs.[156]

In 1993, the City instituted its Matrix program, a comprehensive campaign of harassment of homeless people through a combination of neighborhood sweeps, anti-homeless laws and selective enforcement of a variety of different nuisance ordinances.[157] This program has resulted in at least 27,000 arrests and citations to date.[158]

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[152] McHenry. In the overwhelming majority of cases, the City has dropped the charges. Id.

[153] Id.; Spence, Jan, "Foreign Visitors Brutalized at Food Not Bombs Event", Street Spirit, 3, April 1995; Siegal, Nina, "Never a free lunch", San Francisco Bay Guardian, 15, February 22, 1995.

[154] Siegal.

[155] McHenry.

[156] Id.; Siegal.

San Jose

There are currently 15,000-20,000 homeless people in Santa Clara County, which contains San Jose. There are shelter beds for less than 1,200 people.[159]

In the fall of 1994, the Emergency Housing Consortium (EHC) proposed to build a permanent 250 bed shelter with support services on Timothy Drive in an industrial neighborhood.[160] The shelter was to replace three winter shelters scheduled to close in 1996.[161] Since the area was zoned for industrial uses, EHC needed a conditional use permit in order to open a shelter.[162] Local businesses however, opposed the use of the site and hired a public relations firm to help thwart the project.[163] Residents also opposed the project, despite the fact that they lived half a mile away on the other side of a freeway.[164] Opponents argued that they already had two shelters in the area, and that the shelter would decrease property values and cause security problems.[165] The EHC subsequently hired its own public relations firm to support the project.[166] As a result of the controversy, the Mayor established a working group in the spring of 1995 to study homelessness in the city and to develop policies for permitting future shelters. When it became clear that the City wanted smaller shelters in areas with little community opposition, the EHC dropped plans for the site.[167]

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[157] No Homeless People Allowed at 32-36.

[158] Coalition on Homelessness, San Francisco (telephone interview), December 8, 1995.

[159] Kendall, Maury, Emergency Housing Consortium, (telephone interview), December 8, 1995.

[160] Id.; Iglesias at 7-8.

[161] Dickey, Jim, "Organizers oppose third shelter in area", San Jose Mercury News, December 12, 1994.

[162] Kendall. There is no area of the City where a shelter could be sited without a conditional use permit. Id.

[163] Iglesias; Dickey.

EHC is currently proposing locating a 125 bed shelter, expandable to 250 in the winter, at one of the sites recommended by the working group. Fewer people live in the vicinity of this site, although there is some opposition based on concerns for property value. EHC would need a conditional use permit on this site as well, because it is not zoned for a shelter. They are currently working to reassure the Planning Commission and to gain community support.[168]

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[164] Kendall; Dickey.

[165] Dickey; Kendall.

[166] Iglesias.

[167] Kendall.

[168] Id.

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San Mateo County

San Mateo County has 6,000-8,000 people who are homeless at some point in a given year. There is not year round shelter to serve this population, although there are 600-900 beds in the winter.[169]

In 1990, a blue ribbon committee studied homelessness in San Mateo County and recommended that the County establish three year-round shelters. A group of pastors in the northern part of the County have been opposed in all of their efforts to site a shelter by organized homeowners' associations. This opposition has led to the loss of more than one proposed site.[170] A group of citizens in the central part of the County identified a site in the Sunnybrae neighborhood. Five hundred opponents showed up at the first public hearing. As a result, the plans were scrapped.[171] Although the County has been generally supportive, individual cities have opposed plans to site a shelter. Cities which contain winter shelter have argued that neighboring cities are not doing their part and that their cities will attract homeless people.[172] No shelter has yet been sited, although advocates believe that it is not impossible to do so.[173] More attention, however, must be focused on choosing appropriate sites, planning ahead and addressing legitimate community concerns.[174]

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[169] O'Leary, Ann, Hunger and Homeless Action Coalition, (telephone interview), November 20, 1995.

[170] Iglesias at 7.

[171] Id.

[172] Id.; O'Leary.

[173] O'Leary.

Santa Monica

There is no reliable recent count of the number of homeless people in Santa Monica.[175] The City has approximately 415 emergency shelter beds. In 1994, approximately sixty percent of requests for emergency shelter went unmet[176], and shelters currently have long waiting lists.[177] Mentally ill individuals discharged from state facilities frequently end up on the street; there are not enough shelter beds for mentally ill people to accommodate them.[178]

Santa Monica, a town long considered to be progressive, has in the last few years undertaken a concerted effort to rid the City of its burgeoning homeless population.[179] In 1993, the City sought to limit the distribution of food in public parks by passing an ordinance which would have required a permit for the use of a city park by 35 or more people. The law was enjoined on

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[174] Id.

[175] Bregar, Rev. Janet, West Side Shelter and Hunger Coalition (telephone interview), November 30, 1995.

[176] Mayor's Report at 47, 67, 69.

[177] Bregar.

[178] Mayor's Report at 60.

[179] Most of this effort was initiated immediately preceding and with an eye toward the 1994 election. Bregar.

First Amendment and vagueness grounds.[180] In 1994, the City attempted to limit food distribution to homeless people by passing an ordinance which mandates that any organization which distributes food to the public, including those that do so without charge, must comply with the provisions of the L.A. County Health and Safety Code.[181] This has forced providers to stop serving hot meals.[182] Moreover, the City Council decided to defund emergency food services and a drop in center, and instead to fund programs that provide more long term services to homeless people. Although this can be interpreted simply as a decision about the best way to allocate scarce resources, at least some advocates believe that this was done because the Council assumed that emergency services attract homeless people to Santa Monica.[183] The City has also closed some public restrooms and showers that were being used by homeless people.[184]

In addition, the Council passed an emergency ordinance that waived various requirements for the construction of a new emergency shelter.[185] A new 100-bed shelter has been built pursuant to the emergency construction ordinance. Ordinarily, this would constitute exactly the kind of accommodation of service providers which ought to be encouraged. However, the shelter is seen by advocates as a ploy to allow the City to take a harder line with the rest of the City's homeless residents.[186] This is because the ordinance was passed in conjunction with a number of public place restriction ordinances that are broad enough to ensure that there are no public places in the City where the dispossessed can sleep.[187] The City created the shelter to attempt to avoid legal challenges to the public place restrictions based on arguments that the Constitution forbids arresting homeless people for sleeping in public when there are no alternatives.[188] Even with the new shelter, however, there is not sufficient shelter space to provide many of Santa Monica's homeless residents an alternative to sleeping in public places. The laws are currently being challenged in federal court.[189] All of these measures have had their desired effect, as many homeless people are moving to neighboring Venice.[190]

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[180] Rubin v. City of Santa Monica, 823 F. Supp. 709 (C.D. Cal. 1993).

[181] City of Santa Monica Ordinance No. 1773 (October 25, 1994) amending Section 5.08.370 of the Santa Monica Municipal Code; Bregar, Rev. Janet, West Side Shelter and Hunger Coalition (telephone interview), November 14, 1994.

[182] Freese, Paul, Public Counsel, (telephone interview), November 30, 1995.

[183] Bregar, November 30, 1995.

[184] Id.

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[185] City of Santa Monica Ordinance No. 1742 (CCS), adopted May 10, 1994.

[186] Hill-Holtzman, Nancy, "Two Arrested for Sleeping in Palisades Park Under New Ban", Los Angeles Times, 4, May 12, 1994; Bregar, November 14, 1994.

[187] No Homeless People Allowed at 16-21. The City Council adopted ordinances restricting sleeping in city parks, (City of Santa Monica Ordinance No. 1738 (CCS), adopted April 26, 1994), extending the hours of park closures and banning camping in public places; (City of Santa Monica Ordinance Number 1768 Section 1, amending Section 4.08.091 of the Santa Monica Municipal Code and Section 4, replacing Section 4.08.095 of the Code) and prohibiting "abusive solicitation." (Id. at Section 5, adding Chapter 4.54 - Prohibition Against Abusive Solicitation - to Article 4 of the Santa Monica Municipal Code.)

[188] Hill-Holtzman; Bregar, November 14, 1994. See No Homeless People Allowed at Appendix for discussion of cases raising such claims under the equal protection clause, the right to travel and the Eighth Amendment.

Westminster

The City of Westminster is located within Orange County. County-wide, there are 10,000-12,000 homeless people on any given night and only 975 shelter beds.[191] No good estimate exists for Westminster. However, it makes sense to use County numbers since the cities of Orange County are small and close together and homeless people frequently move between them.[192]

Some of the homeless people ousted from under a freeway encampment in Huntington Beach took up shelter in an abandoned fire station, where they had been invited to stay by a man who leases the building from its owner. That individual had hoped to turn it into a permanent shelter. On April 19, 1994, however,

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[189] Freese; Doucette v. City of Santa Monica, Complaint, (C.D.Ca. February 23, 1994).

[190] Freese; Bregar, November 30, 1995; Doucette, Len, homeless person, (telephone interview), November 30, 1995. In fact, some police officers have told homeless people to move to Venice. Doucette.

[191] Simon, Harry, Legal Aid Society of Orange County (telephone interview), November 21, 1994. Other estimates put the number of homeless people in the County on a given night at 10,000-15,000 people. Shaw, Tim, Orange County Homeless Issues Task Force (telephone interview), November 22, 1994.

[192] Shaw.

Westminster code enforcement officials told the residents to leave the building as it was deemed "uninhabitable" and since police had received complaints from neighbors concerning people "coming and going" from the building.[193]

COLORADO

Denver/Aurora

The City of Denver has recently estimated that it has approximately 3,360 homeless people.[194] Denver has emergency shelter for approximately 1,000 people, and roughly 10% of requests for shelter went unmet in 1994.[195] Moreover, a severe lack of affordable housing is both a main cause of homelessness and a primary factor in an increase in the length of time homeless people remained homeless.[196] The number of homeless families increased by about 90% between 1990 and 1992, and approximately 475 families per night stayed in Denver shelters in

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[193] Hernandez, Greg, "Homeless Group Served Second Eviction," Los Angeles Times (Orange County Edition), B5, April 20, 1994.

[194] City and County of Denver, Colorado, Comprehensive Housing Affordability Strategy, (CHAS), Fiscal Year 1994, at 24. This estimate is based on 1990 data. Id.

[195] Mayor's Report at 67, 69.

[196] Id. at 30, 38.

1993.[197] The City of Aurora has approximately 1,350 homeless people and emergency shelter for only 65.[198]

In 1993, the U.S. Department of Health and Human Services (HHS) approved applications by service providers for housing for homeless people on the then soon to be closed Lowry Air Force Base. HHS approved applications for 196 units of family housing and rooms for 89 individuals.[199] The Lowry Redevelopment Authority, however, had proposed housing for only 86 homeless families and 87 homeless individuals[200]. The Mayors of both Denver and Aurora, which border the base, opposed HHS's approval of housing for that many homeless people on the base, claiming that it would have a detrimental effect on redevelopment.[201] A group of local residents distributed fliers opposing homeless uses at Lowry,[202] which advocates claimed contained grossly distorted statistics about the number of homeless people proposed to live at Lowry and about characteristics of the homeless population.[203] Opponents of HHS's action claimed that property values would drop, neighborhoods would deteriorate and crime would increase. They also claimed that housing homeless people would jeopardize other redevelopment plans and that the base would turn into a "homeless refuge".[204] The Lowry base, however, had 867 existing family units,[205] and redevelopment plans called for construction which would bring that number to approximately 2,600. Therefore, only approximately 8% of the family units on the base would have been occupied by homeless families under the plan approved by HHS.[206]

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[197] Colorado Coalition for the Homeless, "Base Conversion for Homeless", Handsnet Forum (electronic transmission), February 8, 1994.

[198] City of Aurora, Colorado, Comprehensive Housing Affordability Strategy, (CHAS), Fiscal Year 1994, at 28, 42.

[199] Lowry Redevelopment Authority, "Homeless Housing, The Denver Compromise", 1994.

[200] Id.

[201] The Lowry Economic Recovery Project, "Mayors to Testify Before Congressional Committee About McKinney Act Effects", Newsletter, April 1994.

[202] United Neighborhood Organization, "Questions and Answers About Lowry", 1993; United Neighborhood Organization, "Do We Care? It's Decision Time on Lowry!", 1993.

In September of 1994, HUD was able to step in and broker a compromise whereby 86 units of housing for homeless families and 87 single units were located on the base and HUD contributed $5 million to purchase or construct 220 units of off-base housing. The service providers would also receive the proceeds of the sale of the Lowry base housing that would have gone to them in order to help fund the off-base housing.[207] The State and Denver also agreed to provide other financing and loans toward the purchase of additional housing.[208] Some neighbors, however, continued to argue that only 32 families and no individuals should be housed on the base.[209] Other critics argued that the compromise validated Nimby opposition, and that off-base housing would be difficult to site due to the pervasiveness of such opposition in the area.[210]

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[203] Colorado Coalition for the Homeless, "Homeless Families and Individuals at Lowry, Fact Versus Fiction", 1993; Robey, Renate, "Housing plan for homeless stirs fuss", Denver Post, 1B, 4B, October 28, 1993.

[204] Robey.

[205] Id.

[206] Colorado Coalition for the Homeless, Catholic Charities of the Archdiocese of Denver, Aurora Housing Corporation, "Statement to the Press: Non-Profit Organizations Officially Request Supportive Housing Units for Homeless Families at Lowry", October, 1993. The Base also had 5,000 dormitory rooms. Robey. Therefore, housing for individual homeless people would have occupied only a tiny fraction of existing space.

While this situation was eventually resolved through compromise, it was a compromise made possible by a very large infusion of federal money. Owing to HUD's limited resources, it would probably not be prudent to assume that many future disputes between service providers and Nimbys can be resolved in this manner.

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[207] United States Department of Housing and Urban Development, State of Colorado, Department of Local Affairs, Division of Housing, "Grant Agreement", September 30, 1994. This was budgeted at $2,000,000. Id.

[208] Lowry Redevelopment Authority, "Homeless Housing, The Denver Compromise".

[209] Angwin, Julia, "Lowry a model for vacant bases, U.S. may alter homeless act", Denver Post, B-01, July 25, 1994.

[210] Maxfield, Rev. Del, "Lowry compromise reinforces problem", Rocky Mountain News, 42A, July 6, 1994.

CONNECTICUT

Hartford

The most recent study of the number of homeless people in Hartford found that at least 6,800 people were homeless at some point during 1993-94. There is no reliable per night estimate. There are roughly 335 shelter beds and 60 additional winter beds to meet this need. Shelters are usually full or overcapacity.[211]

In December of 1993, the friars who ran St. Patrick-St. Anthony Church in downtown Hartford and the parish's governing council agreed to allow the House of Bread soup kitchen to use the church basement. The soup kitchen fed 200-250 people a day in a site three blocks from the church, but the nuns who operate the House of Bread felt they needed more space. The Roman Catholic Archdiocese of Hartford, however, refused to allow the soup kitchen to move in. The Archdiocese argued that the soup kitchen would jeopardize downtown redevelopment and the church's image and finances, (since much of the church's funding comes from rent on a parking lot it owns across the street).[212] Eventually, House of Bread was able to move into another facility.[213]

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[211] McAtee, Mary, Ct. Coalition to End Homelessness, (telephone interview), November 30, 1995.

[212] Associated Press, "Church Hit For Soup Kitchen KO", January 3, 1994; Associated Press, "Archdiocese Rejects Hartford Soup Kitchen", New York Times, B5, December 28, 1993.

[213] Staffer, House of Bread, (telephone interview), November 20, 1995.

DISTRICT OF COLUMBIA

By a conservative estimate, there are approximately 9,600 homeless people in the District of Columbia. There are only approximately 7,000 emergency and transitional shelter, group home and supported housing slots to meet this need.[214] The number of homeless people in need of rehabilitative services for drugs and alcohol exceeds the supply of such services by approximately 1,500,[215] and there are long waiting lists to get into drug and alcohol treatment programs[216].

In March of 1994, Councilmember Jarvis introduced a bill entitled "Community Residence Facility Amendment Act of 1994" for emergency passage.[217] The bill would have changed the classification of facilities providing virtually any type of service from "boarding house" to "community-based residential facility" (CBRF),[218] a use classification for which it is significantly harder to get licensing and zoning approval. The bill would have had a large impact on organizations providing services to homeless and formerly homeless individuals. Emergency passage of the bill failed on March 3, 1994, and the bill eventually died in committee.[219]

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[214] Community Partnership for the Prevention of Homelessness, (facsimile transmission), November 28, 1995.

[215] Id.

[216] Addiction Prevention and Recovery Administration, District of Columbia, (telephone interview), November 28, 1995.

[217] Council of the District of Columbia, Office of Legislative Services, (telephone interview), November 16, 1995.

[218] Community Residence Facility Amendment Act of 1994, Bill 10-596, Council of the District of Columbia.

Western Presbyterian Church has provided food for homeless people on Church property for over 10 years. The Church moved to a new location in the Spring of 1994, however, the Board of Zoning Adjustment (BZA) ruled that zoning ordinances forbade the continuation of the feeding program at the new location.[220] A federal District Court Judge first granted the Church a preliminary injunction and later a permanent injunction allowing it to continue its feeding program.[221] The Court found that the feeding program was religious conduct protected by the First Amendment and the Religious Freedom Restoration Act.[222] The City originally appealed the decision, but then dismissed its appeal after the Church's pastor made a personal plea to the Mayor. The Church agreed to address noise and traffic concerns and to keep the program indoors.[223] Just prior to the City's decision not to appeal, the Foggy Bottom Association, a leader in the effort to close the Church's feeding program, began serving food out of a van near the Church's original site in an effort to diminish patronage at the new site.[224]

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[219] Office of Legislative Services.

[220] Western Presbyterian Church v. Board of Zoning Adjustment, 849 F.Supp. 77, 78 (D.D.C. April 15, 1994). The BZA upheld a Zoning Administrator's determination that under Section 216 of the District's Zoning Code, (the section which regulates church programs in residential zones), the church program was a prohibited use and therefore the church was required to seek a variance. To so find, the BZA had to conclude that feeding homeless people is not a customary accessory use of a church, since such uses can be conducted as a matter of right. Western Presbyterian, Memorandum Opinion and Order, Civil Action No. 94-0749, 4-7, (D.D.C. 1994).

[221] Western Presbyterian, 849 F.Supp. 77; Western Presbyterian, Memorandum Opinion and Order.

[222] Id. The Religious Freedom Restoration Act requires government entities which substantially burden a person's exercise of religion to demonstrate that the burden furthers a compelling public interest and is the least restrictive means of furthering that interest. 42 U.S.C. Section 2000bb-1.

Luther Place Memorial Church also had difficulties with the City zoning board. Luther Place runs a "continuum of care" residential program for homeless and mentally ill women.[225] They have operated for years with the required licensing for rooming and boarding houses. The zoning board, however, decided that the program was a CBRF and fined the Church $2,500 in October of 1993 for not having the proper certificates.[226] That change in status could have forced the Church to close at least part of its program, since the code says that there cannot be 2 CBRFs within 500 feet of each other. Luther Place, being a "continuum of care" program, would have been in violation of that provision. The Church appealed to the BZA, which on November 2, 1994, granted the necessary exceptions for the next three years.[227] The Church successfully argued that the program was well established and effective in its mission.[228] The BZA acknowledged both the value of "continuum of care" programs and the difficulty of getting them approved under the zoning code. The Church believes that if it were seeking to establish its program rather than retain its existing program, it almost certainly would have lost before the BZA.[229] Luther Place, however, will probably have to fight this battle all over again when the three-year exceptions are up.[230]

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[223] Olsen, Kirsten, "City Drops Effort to Halt Feeding Program", Foggy Bottom News, 1, July-August 1995; Pan, Phillip, "D.C. Pulls Out of Fight Over Soup Kitchen", Washington Post, D8, June 15.

[224] Brown, DeNeen and Vogel, Steve, "Eating Away at NW Church's Soup Kitchen", Washington Post, B1, May 11, 1995.

[225] A continuum of care program offers emergency, transitional and permanent housing along with necessary support services in order to move clients from homelessness all the way to self-sufficiency.

[226] Sharp, Connie, Luther Place (telephone interview), December 2, 1994.

Luther Place is also building an eight-story apartment building which will contain 51 units of affordable housing.[231] In December of 1994, the Logan Circle Community Association appealed the issuance of a building permit for the project to the BZA, arguing that the issuance was improper because the building was to be used as a CBRF and therefore needed BZA approval, which it did not apply for.[232] In January of 1995, the BZA allowed the project to proceed,[233] and Luther Place began construction.[234] The LCCA originally planned to appeal to the D.C. Court of Appeals,[235] but had not done so as of mid-November and has probably dropped its plans to do so.[236]

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[227] Id.

[228] Id. The Church also raised First Amendment concerns similar to those in Western Presbyterian.

[229] Id.

[230] Moe-Lobeda, Ron, Luther Place, (telephone interview), November 16, 1995.

[231] Id.

On June 30, 1995, a federal district court found that the District violated Samaritan Inns'(SI) rights under the Fair Housing Act.[237] SI began providing short term, transitional housing for homeless, former substance abusers in the District of Columbia in 1986. SI soon determined that many of their tenants were relapsing because they could not find affordable, drug and alcohol-free housing when they left the SI's short-term housing. In 1991, SI opened Lazarus House, which provided 81 single-room-occupancy units for the long-term housing of former substance abusers.[238] The success of Lazarus House and the overwhelming demand for the housing it provides prompted SI to buy another building to provide more of the type of housing found at Lazarus

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[232] Jenkins, Mark and Rice, Bill, "LCCA vs. Luther Place: CBRF Fiction?", Washington City Paper, 10, January 27, 1995.

[233] Id.

[234] Moe-Lobeda.

[235] Jenkins and Rice.

[236] Id.

[237] Samaritan Inns v. District of Columbia, No. 93 cv 2600 RMU, (D.D.C. June 30, 1995).

[238] Id. at 8-11.

House. In 1993, SI applied for a permit to convert the building into a boarding house, named Tabitha's House, which was the same use that the District had authorized in Lazarus House's certificate of occupancy.[239] Soon after SI began refurbishing Tabitha's House, some members of the community began to vociferously petition District officials to block the project, erroneously claiming that Tabitha's House would be a drug treatment facility.[240] The District responded to this opposition by issuing a stop-work order and an order revoking the building permits for Tabitha's House. District officials did so despite the fact that they knew or should have known that Tabitha's House met the requirements of D.C. law and was entitled as a matter of right to use the property as it planned.[241] In December of 1993, an administrative law judge found that the city had no evidence that warranted their actions against SI, but the stop work order remained in effect.[242] In January of 1994, the stop work order was rescinded. Tabitha's House was completed in June of 1994, and the District issued it a certificate of occupancy in July.[243] The neighbors who opposed Tabitha House appealed the issuance of the certificate to the Board of Zoning Adjustment,[244] but the process was mooted by the Court's decision.

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[239] Id. at 12-13.

[240] Id. at 16-24.

[241] Id. at 5.

[242] Id. at 34.

[243] Id. at 36-37.

The District's actions had a devastating effect on Samaritan Inns. SI suffered damages associated with construction delay, staff overhead, receipt of funds for the building of Tabitha's House, and lost and delayed contributions.[245] These latter damages were especially significant because the District's actions came just as SI was preparing to embark on an ambitious campaign to raise $6 million to provide additional short term and permanent housing in seven different buildings. The uncertainty the District's actions created about the ability of SI to perform its mission and the effect pretextual accusations the District made against SI had on SI's reputation rendered SI unable to meet any of the campaign's goals.[246]

The court found that "the defendants acted in response to the unsupported beliefs and consequential fears of neighborhood opposition groups that a 'drug treatment facility' would be established in their neighborhood. Driven by the protestors' ill-informed attitudes which stereotyped former abusers of drugs and alcohol, the defendants misused the powers of government to deprive Samaritan Inns and its beneficiaries of their rights" under the Fair Housing Act.[247] The court noted that the Act precludes discrimination on the basis of handicap, and includes recovering substance abusers within the definition of those handicapped. The court found that the Act had been violated both because the District intended to discriminate on the basis of handicap and because the District's actions had a disparate impact upon handicapped persons.[248] The court awarded SI $2.4 million dollars in damages, largely due to lost contributions, and enjoined the District from engaging in future discriminatory practices against Samaritan Inns.[249]

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[244] Id. at 37-38.

[245] Id. at 5-6, 42-60.

[246] Id. at 29, 43, 49-51, 65.

Oxford House, a private organization, assists in operating self-run group homes for recovering substance abusers nationwide.[250] In 1992, without citing any specific objections, neighbors of one of the 34 Oxford Houses in the District complained to zoning officials that their neighborhood was already overburdened with social services agencies. Zoning officials then cited Oxford House, arguing that the home was a rooming house requiring a certificate of occupancy because it had more than six residents. The zoning law prohibits groups of seven or more unrelated people from living together without a certificate. The officials also argued that the house did not meet the safety standards applicable to rooming houses.[251] Oxford House and the U.S. Department of Justice filed suit against the District, asserting that the District violated the Fair Housing Act by refusing to reasonably accommodate Oxford House by allowing the Oxford House in question, as well as all of the other Houses in the District, to operate as group homes for more than six residents.[252] On August 29, 1995, the District settled the suit by agreeing to treat all of the District's Oxford Houses as non-owner occupied single family residences. This would avoid the six-person limit. Instead, the parties agreed to impose a fifteen-person limit.[253]

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[247] Id. at 67-68.

[248] Id. at 62-66.

[249] Id. at 69-71.

[250] United States of America v. District of Columbia, Complaint, Civil Action No. 93-1091, (D.D.C. June 2, 1993).

FLORIDA

Collier County

There are between 800 and 1,200 homeless people in Collier County on a given night.[254] There is shelter space for roughly

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[251] Id.; Duggan, Paul, "Group-Home Operator, District Settle Lawsuit; Program Exempted From Zoning", Washington Post, Metro, September 7, 1995; 11 DCMR Section 3202.1 and 199.9.

[252] Id.

[253] United States of America v. District of Columbia, Consent Order, Civil Action No. 93-1091 (EGS), (D.D.C. Aug. 29 1995).

[254] Mallory, David, First Assembly of God of Naples (telephone interview), December 1, 1995. This range reflects not only the normal indeterminacy associated with trying to estimate the number of homeless people in a given area but also the fact that the number fluctuates significantly in Collier County because many poor people rent housing by the week and are unable to acquire it when temporary labor is unavailable.

100 people.[255] All of these beds are limited to certain subgroups of the homeless population such as homeless families. There are no beds for single men which are not attached to a substance abuse program.[256]

In 1991 the Collier County Code Enforcement Board shut down the shelter that the First Assembly of God ran on its property, asserting that a shelter was not a "customary accessory use" of a church permitted by the zoning code. The Eleventh Circuit eventually upheld that decision in the face of a challenge based upon the free exercise of religion, and the Supreme Court declined to hear a further appeal.[257] This was the first of four successful efforts by the County to prevent the Church from creating a shelter for homeless people.

In 1993, First Assembly put a deposit down to buy an old funeral home, but the County passed a provision saying that homeless shelters need a minimum amount of parking which the home did not have.[258] Later in that year, First Assembly acquired an option to buy a piece of land. The County, however, enacted a provision which required a minimum amount of outdoor recreation which the facility would have been unable to provide.[259] In 1994, the Church worked out a deal to buy some land zoned to include a homeless shelter as an acceptable use. Just before the closing, however, the County changed the zoning code to require a conditional use permit for a homeless shelter in any zoning classification. The Church pulled out of the deal because it did not believe it would be able to get the permit, and lost $20,000 as a result.[260]

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[255] Id.

[256] Id.

[257] First Assembly of God of Naples, Florida v. Collier County, Florida, 20 F.3d 419, 420 (1994), modified 27 F.3d 526 (1994). First Assembly and some of the residents of its shelter brought suit alleging procedural due process and free exercise clause violations in the zoning board's decision against them. The District Court granted summary judgment for the County and plaintiffs appealed to the Eleventh Circuit, which affirmed. The plaintiffs petitioned the Supreme Court to hear the case, but the Court declined. 115 S.Ct. 730 (1995). See discussion in Important Legal Rulings Section below.

[258] Mallory.

In spite of these actions, the Church maintains efforts to help homeless people. It shelters some people in small homes it has purchased. Due to a lack of shelter space in the area, other shelters, a local hospital, the police department, the City of Naples and even County agencies sometimes send homeless people to the Church for shelter. The Church shelters as many people as it can without incurring the large fines that would apply if they were found to have violated the Court's order. The County allows the Church to open its shelter when the temperature drops below 45 degrees, but it must close as soon as the weather warms.[261]

The County originally justified its actions by arguing that shelter would attract homeless people to the area. They stopped using this argument when studies showed that 65% of homeless people have lived in the County 5 years or more. Despite its own contribution to the problem, however, the County has conducted sweeps of homeless people's encampments and forced landowners to cut out brush so that homeless people cannot stay there undetected. Moreover, the County has an anti-camping ordinance that applies within one mile of the beach. It is currently trying to extend this zone about 20 miles inland and to pass a vagrancy ordinance. Since a federal court in Miami has held it to be unconstitutional to criminalize homeless people for living in public when there is no alternative,[262] the County now wants to build a facility. On the day after the Supreme Court declined to hear the Church's appeal, the County asked the Church to build a shelter. Despite the fact that there was a perfect location near the Church, the County limited possible sites to a remote area approximately 10 miles from the Church which is far from any homes or businesses and which would require residents to use Church buses to reach work or any other local service or amenity. The Church is currently looking for a site.[263]

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[259] Id.

[260] Id.

[261] Id.

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[262] Pottinger v. City of Miami, 810 F. Supp. 1551 (S.D. Fla. 1992).

[263] Mallory.

Jupiter/Palm Beach County

There are roughly 4,000-5,000 homeless people in Palm Beach County. There are approximately 250 shelter beds to meet the need.[264] The town of Jupiter, which is in the County, has no beds, facilities, or services available to aid or shelter homeless people.[265]

Sandy Hamilton, a local services provider, reports that she received a provisional license from the town of Jupiter in December of 1993 and opened an office to provide services during the day to about 50 local homeless people in January of 1994.[266] Her neighbors complained to the town about the opening of the office. Meanwhile, the local police were arresting homeless people for sleeping in the woods. Hamilton and a police sergeant agreed that it would be better to allow some of these people to sleep at her office. Code enforcement officers found out and told her not only that people could not sleep there, but that she could no longer pass out food because she wasn't licensed.[267]

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[264] Murphy, Patrick, Homeless Coalition of Palm Beach County, (telephone interview), November 20, 1995.

[265] Kreidler, Frank, Cooperating Attorney, ACLU of Florida (facsimile transmission), November 11, 1994; Hamilton, Sandy, et. al., First Amended Petition for Administrative Hearing, Town of Jupiter Development Order and Comprehensive Plan Amendments Regarding the ABACOA Project, 6, Florida Department of Community Affairs, Docket No. 95-1-NO1-5018-(A)-(I)(N), October, 1995. (Hereinafter "First Amended Petition").

[266] Hamilton, Sandy, Heaven on Earth (telephone interview), November 8, 1994; First Amended Petition at 4-5.

[267] Hamilton.

Furthermore, they informed her that only one client could be in the facility at a time, because the town wouldn't allow loitering within the building.[268] Knowing that this would completely hamstring her efforts to provide services, she closed the office a mere three weeks after it had opened.[269]

Although the Town of Jupiter will not allow Hamilton's office, and has no zoning code provisions which allow such services and housing, it has annexed land on which a developer is planning to build a $600 million housing development, and has changed its zoning to allow another large development.[270] Hamilton and some homeless residents of Jupiter have challenged these developments based on the fact that they do not serve low-income people. The challenges argue that the Comprehensive Plan Jupiter was required to file with the State asserts that Jupiter is planning services and housing for low-income people. Moreover, a Jupiter ordinance states that the zoning code shall implement the Plan. Therefore, approval of the developments, and the zoning code generally, are not in compliance with state law.[271] The Florida Department of Community Affairs has granted the petitioners a hearing on these issues.[272]

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[268] Id.; Ciarfella, Mark, Town of Jupiter Planner, Letter to Sandy Hamilton, January 26, 1994.

[269] Hamilton; First Amended Petition at 7-8.

[270] Hamilton, Sandy, Heaven on Earth (telephone interview), October 25, 1995; First Amended Petition at 6-7; Ciarfella.

Hamilton also reports that on February 1, 1994, she opened a group home in Palm Beach County after being told by a zoning official that she could do so. When code enforcement officers found out about the home, they came and told her that she needed a license from the state. However, when she tried to acquire one, she found that no such license exists.[273] She then went before the zoning board who gave her 15 days to remove 26 of the 30 people staying at the shelter. Hamilton responded by filing a complaint with HUD. Eventually, the County gave her a temporary extension, but ownership of the house changed and the new landlord succeeded in having Hamilton evicted on July 5, 1994. The house remained vacant for a number of months.[274] The complaint with HUD is pending.[275]

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[271] First Amended Petition at 6-7; Hamilton, Sandy, Challenge and Objection to Abacoa Project, filed with Treasure Coast Regional Planning Council, October 24, 1994.

[272] Kreidler.

[273] Hamilton, November 8, 1994.

[274] Id.; Hamilton asserts that she put significant amounts of her own money into the project and that her own family almost ended up homeless as a result. Hamilton, November 8, 1994. She also had rented an apartment as a shelter for four people, despite the fact that she was working with extremely limited funds, but this project had to be discontinued because she moved away. She is, however, now planning a community awareness campaign to be conducted in Jupiter. Hamilton, October 25, 1995.

[275] Hamilton, October 25, 1995.

Miami

Dade County has recently estimated that it has approximately 6,200 homeless people.[276] Miami has approximately 1,100[277]-1,500[278] emergency shelter beds, and there are as many as 2,900 beds in all of Dade County.[279] There are at least several thousand people who live on the streets of Miami and many more throughout Dade County.[280] The City of Miami has noted that the lack of affordable housing is a main cause of homelessness and that the length of time people remain homeless has increased due to a shortage of transitional and permanent affordable housing with services.[281] In fact, Miami stated that there would be enough shelter beds county-wide if there were sufficient transitional and permanent housing facilities for people to move into from the shelters.[282] A recent report noted that "[v]irtually every sponsor faces strong community opposition to development" of this type of housing, and zoning and building codes are significant barriers to construction.[283]

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[276] Metropolitan Dade County, Florida, Comprehensive Housing Affordability Strategy (CHAS), Fiscal Year 1994 at 86.

[277] Mayors' Report at 69.

[278] Pottinger v. City of Miami, Findings and Order on Limited Remand From the Eleventh Circuit Court of Appeals, Case No. 88-2406-CIV-ATKINS, 7, (S.D.Fl. April 7, 1995).

[279] Id.

[280] Pottinger at 6.

[281] Mayors' Report at 30, 38. The County has also made similar observations. Metropolitan Dade County CHAS at 88.

[282] Id. at 51.

In 1993, Dade County adopted a 1% tax on restaurant meals at establishments grossing over $400,000 per year, in order to fund facilities and services for homeless people.[284] The tax went into effect in October of 1993. The Dade County Homeless Trust, which was set up to administer the funds, plans to build large emergency shelters as well as transitional and permanent housing in order to create a system with a "continuum of care" approach.[285] The first planned large shelter opened October 18, 1995.[286]

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[283] Blue Ribbon Committee on Permanent Housing, Expanding the Supply of Advanced Care Housing, 5, 14, April 14, 1994.

[284] The tax was enacted in the aftermath of a 1992 federal district court ruling that Miami's practice of arresting homeless people for innocent, necessary conduct performed in public was unconstitutional since homeless people had nowhere else to perform such activities. See Pottinger v. City of Miami, 810 F.Supp. 1551 (S.D. Fla. 1992). Pottinger is currently on appeal.

[285] No Homeless People Allowed at 109.

[286] Taylor, Linda, Miami Coalition for the Homeless, (telephone interview), November 20, 1995. While the meal tax is a model method of raising a large amount of money in a relatively painless way, the Trust's allocation of funding has been somewhat controversial. Critics argue that much of the meal tax money seems targeted at removing visibly homeless people from City streets instead of creating long term solutions. No Homeless People Allowed at 109-112. For example, critics argue that meal tax money was spent to put downtown homeless people in boarding houses during an international summit, despite the fact that homeless people away from the downtown were living in worse conditions. Critics also argue there is a disproportionate emphasis on emergency shelter as opposed to permanent housing. Id.

Strong community opposition however, has hampered efforts to site another large shelter. Three sites were originally considered, but each faced considerable opposition from local residents.[287] As a result of this opposition, the Metro-Dade Commissioners in May of 1995 chose Homestead Air Force Base as the site of the shelter, despite local opposition to that site as well. Homestead, however, is far removed from such things as bus lines, jobs and social assistance offices which homeless people need access to in order to reintegrate into society. Moreover, plans to build 500 apartment units for needy people on the base were scaled back to 200 as a result of the plans to build the shelter there.[288] Thus, as a result of local Nimbys, a large shelter will be sited far from needed services and 300 units of low income housing will not be built.

HAWAII

Honolulu

There are approximately 8,000-10,000 people who are homeless in the state of Hawaii, most of whom are concentrated in Honolulu, on the island of Oahu.[289] An estimated 2,000-3,000 of the state's homeless people are suffering from some form of

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[287] Rogers, Peggy, "Homeless Shelter Site Proves Hard Sell", Miami Herald, May 13, 1995 at 1B, 4B.

[288] Id.; Rogers, Peggy, "Homeless Shelter OKd for Homestead Air Base, Miami Herald, May 19, 1995 at 1B, 2B; Taylor.

[289] Erickson, Sally, Safe Haven Task Force, (telephone interview), October 30, 1995.

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mental illness. There is only one emergency shelter on Oahu, with space for only 250 people.[290] There is no emergency shelter specifically for mentally ill people.[291]

The Safe Haven Task Force sought to renovate an old City fire station with HUD money under the Safe Homes Program to use as a temporary site to provide emergency and transitional housing to homeless, mentally ill people. Some neighbors opposed the plan, and went door to door passing out fliers which allegedly contained lies about the proposed facility.[292] Eventually, the Mayor stepped in and appointed a site selection task force. A better location was found, and The Safe Haven was scheduled to open its project on December 1, 1995.[293] While this example had a happy ending, The Safe Haven felt that the controversy could have been avoided if they had tried to meet with the neighbors earlier and had taken the community organizing against the project more seriously at the outset.[294]

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[290] Id. Moreover, living conditions at the shelter are poor, since people sleep on mats on the floor of one large room. Foscarinis, Maria, National Law Center on Homelessness and Poverty, (first hand account), November 22, 1995.

[291] Erickson.

[292] Id.

[293] Id.

[294] Id.

IDAHO

Caldwell

Turning Point began trying to establish a homeless shelter in Caldwell in 1991 after the City lost its only existing shelter.[295] After allegedly being assured by the City Planning and Zoning Department that a special use permit was not required, Turning Point bought a large home in Caldwell for use as a homeless shelter in 1992.[296] The house is located in an area zoned "community commercial" which includes residences as well as businesses.[297] The shelter served up to 40 people at a time.[298] After some complaints by neighbors about having the residence in their backyard and a minor fire at the shelter, the City Director of Planning decided that a Special Use Permit was required under Caldwell's zoning ordinance, because that ordinance only permitted group homes with less than twelve people as a matter of right.[299] The Planning Commission, applying the Uniform Housing Code which provides occupancy limits for all buildings intended to be used for human habitation, approved the permit for a maximum of 25 residents if Turning Point met certain conditions, such as installing a new sidewalk, parking spaces and landscaping. A citizen appealed the occupancy limit to the City Council and Turning Point appealed the conditions as well as the limit.[300] The Council reduced the limit contained in the Special Use Permit to 15 people and retained the conditions.[301]

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[295] *Turning Point v. City of Caldwell*, Civ. 94-0169-S-LMB, 2, (D. Id. Dec. 28, 1994). The operators of Turning Point, who had some connection with the earlier shelter, attributed the earlier shelter's closing to its inability to obtain a Special Use Permit from the City Planning and Zoning Department. *Id.*

[296] *Id.* at 3.

[297] *Id.* at 6.

[298] *Turning Point v. City of Caldwell*, Civ. 94-0169-S-LMB, Plaintiff's Memorandum in Support of Motion for Temporary Restraining Order, 8, April 19, 1994.

[299] *Id.*; *Turning Point* at 5-6.

Turning Point brought suit under the Fair Housing Act, asserting that the City should have applied its Uniform Housing Code, under which the Planning Commission determined that 25 people could live at the house. The Court concluded that making Turning Point apply for a Special Use Permit was reasonable but that the City did not reasonably accommodate Turning Point within the Special Use Permit system. The Court found the 15-person limit to be unreasonable given that the Commission had accepted 25 and ordered that occupancy be increased to 25. The Court also found that the number of parking spaces required was unreasonably high and that the sidewalk and landscaping requirements were unreasonable. Other conditions were upheld.[302]

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[300] Turning Point at 11-12. The citizen, whose had an office in the neighborhood but did not live there, told the Council "I'd like to burn the whole place down, but it's unreal. I can't do it." Plaintiff's Memorandum at 11.

[301] Turning Point at 15-16.

[302] Id. at 25-33.

MARYLAND

Baltimore

On any given night there are 2,000-2,400 homeless people in the City of Baltimore.[303] There are 1,461 emergency and transitional beds in the City, with an additional 295 added in the winter.[304] In 1994, Baltimore shelters had to turn people away on over 36,000 occasions.[305] Services for homeless substance abusers are inadequate to meet the demand.[306]

Nehemiah House, a church-run non-profit, sought to open a 40-bed drug and alcohol treatment facility for homeless men at Ft. Holabird, a closed military base.[307] They submitted an application to the U.S. Department of Health and Human Services in February of 1995, and the application was approved in March.[308] This should have meant that Nehemiah House would receive the portion of the base they requested.[309] When these plans became public in May of 1995, however, neighbors organized opposition, arguing that their property values would decrease. A state Senator, a U.S. Representative and the Mayor of Baltimore argued against the plan.[310] U.S. Senators Mikulski and Sarbanes offered an amendment to the 1996 Defense Authorization Bill which would give a Local Redevelopment Authority named by the Mayor the opportunity to review the application.[311] The Redevelopment Authority could refuse the application for base property, although it would probably still have to either provide services which are substantially equivalent to those Nehemiah House would have provided or give Nehemiah House substantially equivalent property or the money to buy such property.[312] Mikulski and Sarbanes' amendment was approved by the Senate, and was in a conference committee of both houses of Congress as of mid-November.[313]

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[303] Homeless Relief Advisory Board, "Baltimore's Approach to Homelessness: A Plan to Develop a Continuum of Services", 21, May 1995.

[304] Id. at 80.

[305] Id. at 21.

[306] Id. at 15.

[307] Apperson, Jay, "Bill would give neighbors a say on Ft. Holabird", Baltimore Sun, September 7, 1995.

[308] United States Government's April 1995 Monthly Report to the National Law Center on Homelessness and Poverty submitted pursuant to court order in National Law Center on Homelessness and Poverty et. al. v. Veteran's Administration, et. al., 88-2503 (D.D.C. December 12, 1988)(Gasch, J.)

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[309] Weir, Laurel, National Law Center on Homelessness and Poverty, (conversation), November 14, 1995.

[310] Apperson; Kramer, Art, "Residents target planned drug center at Ft. Holabird" The Baltimore Sun, May 4, 1995.

[311] Weir; Apperson.

[312] Weir.

[313] Apperson; Weir.

MASSACHUSETTS

Littleton

There is no stable population of homeless people in Littleton. The town only has 7,000 residents, and people who become homeless in Littleton and other neighboring small towns usually gravitate to larger nearby cities such as Lowell. There is no real housing for those who become homeless in Littleton, apart from that discussed below.[314]

The example of Littleton demonstrates that discriminatory enforcement of the laws against a community's poorest members is not solely the province of big cities. In May of 1994, as a result of the Town's efforts to shut them down, Perri and Hugh Ernisse report that they lost one of the two houses they have been operating as boardinghouses for low or no income boarders. The Ernisses have been taking in boarders in Littleton since 1971. They have accepted what rent their tenants can pay, but many of their tenants have been unable to afford to pay anything.

Although the Ernisses provide the only such housing in the area, the Town has been trying to use zoning laws to shut down the house the Ernisses lost since 1988. The house has room for up to 18 people, but a judge ruled that tenants could only stay in two units. Since the residents of only one of these units was paying rent, the Ernisses were unable to continue to pay taxes on the house.[315] The Town has also been trying since 1986 to use discriminatory enforcement of the zoning laws to shut down the Ernisses' remaining house.[316]

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[314] Ernisse, Hugh, Keep It In the Family (telephone interview), November 24, 1994.

MINNESOTA

St. Cloud

There are at least 80 homeless people on any given night in St. Cloud. This number probably does not reflect the fact that there has recently been a sharp increase in homelessness in the area due to cuts in benefits. There are approximately 50 beds to meet this need.[317]

In early 1995, the local Veteran's Administration Hospital and Catholic Charities proposed to create a group home for four recovering substance abusers who had completed in-patient treatment and a six-month program. The service providers sought to use an abandoned house located in a residential neighborhood. They filed a joint application with the local housing authority asking the authority to apply for state funding for the project.[318] Neighbors, however, immediately organized to protest, asserting that the occupants would engage in deviant behavior, cause increased traffic, and present other problems. They also alleged that because the house was in a state of disrepair, the proposed group home was a poor use of public funding.[319] The Board of Commissioners of the local housing authority denied the application in the Spring of 1995, and stated that they did so based upon the condition of the premises, not the neighbors concerns, which they explicitly discounted. The housing authority did help the non-profits locate another suitable site in a different neighborhood. Unlike the original neighborhood proposed, the new neighborhood had already had a variety of social services and low-income housing projects.[320]

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[315] Id.

[316] Id.

[317] Clark, Doug, St. Cloud Area Legal Services, (telephone interview), December 5, 1995.

[318] Id.; Clark, Doug, St. Cloud Area Legal Services, (electronic mail), November 15, 1995.

About two months later, another local non-profit, the Housing Coalition of the St. Cloud Area, sought to build a new homeless shelter. The non-profit already runs a homeless shelter in the city, but they wanted a new facility since it is located in an old house with structural problems.[321] The property for the proposed new shelter, however, was not zoned to allow multi-family use and therefore needed to be rezoned.[322] A recent City comprehensive land use plan, however, indicated that changing the zoning in that area to a designation that would permit this type of usage would be appropriate. Based on the plan, the non-profit requested the necessary zoning change. The neighborhood, however, organized against it, arguing that homeless people would engage in deviant behavior, traffic would increase and property values decrease. The provider offered statements from the neighbors of the existing shelter attesting to the fact that the shelter had caused minimal problems and statements from local real estate professionals that property values would not decrease in any meaningful way as a result of the shelter.[323]

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[319] Clark, November 16, 1995.

[320] Id.

[321] Id.

[322] Clark, December 5, 1995.

The City Council voted 4-3 to rezone the property to accommodate the shelter. However, since rezoning requires a two-thirds majority to pass, the effort to rezone the property was defeated. All three Councilmembers who voted against the project cited the neighbors' protests as the reason for their votes.[324]

St. Paul

St. Paul has approximately 1,000-2,000 homeless people at any one time.[325] There are only approximately 360-500 shelter beds in St. Paul and they are usually filled to overcapacity.[326]

On May 3, 1995, the City Council of St. Paul passed an interim ordinance banning daytime drop-in centers in most categories of zoning districts.[327] A drop-in center will only be permitted in the most heavily commercialized districts, and the center must be at least 600 feet from any day care center, public library, school, museum or other drop-in center. The ordinance was to remain in effect until the Council could complete and consider the results of an ongoing study into permanent zoning regulations for such facilities, or for one year, whichever is sooner.[328] The ordinance was conceived as an attempt to exclude drop-in centers from certain areas of town. Specifically, the ordinance was aimed at Listening House, a twelve-year-old drop-in center in downtown St. Paul that provided 30,000 people a year a place to go during the day which offered companionship, prayer meetings and assistance finding jobs and services.[329] Listening House had learned in January that its lease would not be renewed. This was almost certainly because a new children's museum was being built across the street. Listening House had discussions with the owner of a vacant building about selling the property to serve as the new facility, but a City official and a police commander urged the owner not to sell to Listening House and the deal fell through.[330] As of mid November of 1995, Listening House had lost its lease, although the nuns who run it were continuing to do outreach on the street.[331] In addition, Catholic Charities is in the process of refurbishing an unused part of a shelter to become the new Listening House facility. The new site is very near the old, and is technically in violation of the ordinance. However, the community and the media have placed a lot of pressure on the City on behalf of Listening House since the ordinance was proposed. As a result of this, and the high stature Catholic Charities has in St. Paul, the City has agreed to allow Listening House to move in.[332]

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[323] Clark, November 16, 1995.

[324] Id.

[325] Nagler, Nancy, Ramsey Action Programs, (telephone interview), November 15, 1995.

[326] Nagler; Mayors' Report at 69.

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[327] City of St. Paul Ordinance No. 95-350; The ordinance defined a drop in center as "a facility where disadvantaged people are offered services such as a free meal or snack, daytime shelter, or counseling excluding counseling at outpatient clinics or counseling centers licensed by the Minnesota Department of Health, but where no overnight shelter is permitted." Id. at Section 1.

[328] Id. at Section 2.

[329] Grow, Doug, "St. Paul turns a deaf ear to the plight of the Listening House", Star Tribune, 36, April 14, 1995.

N E B R A S K A

North Platte

There are no reliable estimates of the number of homeless people in North Platte, and the population is seasonally variable. Lincoln Connection, the shelter discussed below, is the only shelter in town. It provides 19 emergency beds and 4 transitional apartments.[333]

In the summer of 1994, the owner of a downtown building donated the structure to a group of local organizations and residents so that they could open a homeless shelter.[334] That fall, a group of local business owners filed suit alleging that the shelter would cause a concentration of homeless people in the downtown. They asserted this would unreasonably impair the use of their land and therefore would constitute a private nuisance.[335] The merchants were afraid that transients would come into the city to utilize the shelter from a very large railroad yard and from Interstate 80, both of which are nearby. They alleged that this would result in an increase in crime, and that their property values would decline and that their insurance rates would increase.[336] A temporary injunction was denied and the shelter opened in late fall.[337] The issue, however, was very divisive in the community. The shelter expressed a willingness to move if a new site could be found and if funding for it could be obtained. The merchants came to see that there had been no increase in crime since the shelter opened, and that users of the shelter were predominantly local people, including women and children. This lessened the merchants resolve to move the shelter out immediately.[338] After nine months of mediation, the shelter and the merchants agreed to work together to find a new site that was agreeable to both parties and to the new neighbors, as well as to secure funding for it.[339] The suit was dismissed. As of late November of 1995, the shelter remained in operation and the parties were searching for a new site and funding.[340]

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[330] Id.

[331] Nagler.

[332] Id.

[333] Bomberger, Dale, Lincoln Connection, (telephone interview), November 21, 1995.

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[334] Young, Anthony, Western Nebraska Legal Services, (telephone interview), November 21, 1995.

[335] Id.; Shiffermiller, Joy, Ruff, Nisley & Lindemeier, (telephone interview), April 25, 1995.

[336] Young.

[337] Id.; Shiffermiller.

[338] Young.

NEW YORK

New York City

There are approximately 50,000 homeless people in the New York City at any one time. About half of those stay in shelters, the other half on the street. Approximately 30% of the City's homeless people have histories of severe mental illness.[341]

In the spring of 1994, Community Access negotiated a proposed purchase of a partially completed building in the upscale Manhattan neighborhood of Gramercy Park with the owner, First Nationwide Bank. Community Access planned to create housing for 28 homeless people with psychiatric disabilities.[342] Meanwhile, neighborhood opposition to the plan crystallized, and the bank backed out of the deal.[343] On June 17, Community Access filed a Fair Housing complaint with HUD against the bank and leaders of the opposition. The subsequent HUD investigation of the neighbors, like a similar contemporaneous one in Berkeley[344], was highly controversial because of the First Amendment concerns raised by investigating private citizens on account of their opposition.[345] As a result of the investigation, Community Access filed another complaint against the representative of a group of neighborhood opponents who tried to buy the building in order to prevent Community Access from purchasing it.[346] Community Access subsequently withdrew its complaint against the leaders of the opposition, but maintained the complaints against the bank and the neighbors' representative until September of 1994.[347] At that time, the bank signed a contract with Community Access. The contract, however, had a December 30 deadline.[348] A few days before the deadline in the contract with the bank, the State Office of Mental Health (OMH), which had agreed to provide funding for the project, required Community Access to come up with over $400,000 in additional funds. Community Access believed this was a result of community opposition.[349] Community

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[339] Id. The old site would be used for housing. Id.

[340] Id.

[341] Coalition for the Homeless, "Homelessness in New York City", (fact sheet).

[342] Patsos, Catherine, Community Access, (telephone interview) November 21, 1995.

[343] Foderaro, Lisa, "HUD Inquiry Into Protests is Deplored", New York Times, B1, September 1, 1994.

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[344] See discussion of Berkeley above.

[345] Id.; Gugliotta, Guy, "ACLU Alleges Free Speech Violations in HUD Probes", Washington Post, A20, August 17, 1994.

[346] Patsos.

[347] Id.; Foderaro.

[348] Patsos.

[349] Id.

Access was able to line up the additional funding, but was not able to get possession of it on such short notice. This was unacceptable to OMH. Community Access tried to get a temporary restraining order in federal district court to force OMH to live up to its original agreement. That was unsuccessful, and the deal with the bank fell through.[350]

In June of 1994, Interior Secretary Bruce Babbitt concluded that only two-thirds of the Navy's soon to be closed Fort Wadsworth on Staten Island was suitable for takeover by the National Park Service. This meant that the remaining land, including a newly-built 400-person dormitory, would be eligible under the McKinney Act for distribution to service providers for homeless people.

U.S. Rep. Susan Molinari, Mayor Rudolph Guiliani, Gov. Mario Cuomo, and U.S. Sens. Daniel Moynihan and Alphonse D'Amato all opposed Babbitt's decision. While Cuomo, Guiliani and Moynihan all cited jobs that would not be created if the Park Service did not take over the land, Molinari openly opposed housing for homeless people on the site, as well as the McKinney Act itself. She asserted that Staten Island was already doing more than its proportionate share. Other opponents also noted that the land, which abuts some of the borough's most expensive real estate, was itself prime development land.[351] As of late November of 1995, no service provider had applied for the property, at least in part because of the vociferous Nimby opposition that is certain to meet such an application.[352]

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[350] Id.

NORTH CAROLINA

Durham

There are approximately 400-500 people who are homeless on any given night and 1,500 who are homeless over the course of a year in Durham. There is shelter space for approximately 300 people.[353] The City has recognized the need for affordable housing to serve this population.[354]

In late 1992, New Directions of Downtown Inc., an operator of transitional housing, applied for City funding to create affordable permanent housing for homeless and low income people. Originally, there was support for the project at the proposed site, since New Directions was already operating a transitional housing facility in the neighborhood which had good relations with the community.[355] Other service providers, however, also wanted to move in nearby, and a small group of neighbors argued that the area would become saturated and that New Directions did not care about the community. New Directions was not prepared for the opposition,[356] and the City Council voted 12-1 to deny the funding.[357] Despite the controversy, the transitional facility has retained its good relationship with the neighborhood.[358]

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[351] Noah, Timothy, "New York Politicians Want to Block Homeless Housing on Former Navy Base", Wall Street Journal, A7A, July 1, 1994.

[352] Weir, Laurel, National Law Center on Homelessness and Poverty.

[353] Allebaugh, Terry, New Directions of Downtown, Inc., (telephone interview), December 5, 1995.

[354] City of Durham Comprehensive Housing Affordability Strategy (CHAS), 34, 1994.

New Directions next tried to get City funding to build the project at another site. This time, neighbors were overtly hostile since they had no previous relationship with New Directions.[359] Opponents made the same arguments as opponents to the first site made.[360] They also argued that the project would require widening a road, which would destroy one neighbor's front yard. New Directions met with neighbors repeatedly to try to address their concerns.[361] In late 1993, however, the City Council voted 8-5 not to fund the project.[362]

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[355] Allebaugh.

[356] Id.

[357] North Carolina Low Income Housing Coalition (NCLIHC), "Lessons from the Front Line", Homeless Network Notes, 1, September 1995.

[358] Allebaugh.

[359] Id.

[360] Id. New Directions, however, believes that these arguments were significantly less valid in this case than in the prior one. Id.

New Directions subsequently tried again with a third site, and used the lessons they learned in the first two processes to guide their efforts to successfully secure funding for the third site. This time, they focused on organizing and process issues. They gathered support and made key alliances with local institutions before the process started and established a strategy team which met weekly.[363] New Directions also worked closely with the City Council and the neighbors throughout, addressing their concerns and seeking their advice.[364] There were some opponents of the project who argued that it was too high density and that they were not adequately informed. New Directions was able to show, however, that the density of the project would be roughly the same as that of other uses.[365] In the summer of 1995, the Council approved funding for 71 low-income units.[366] New Directions feels that its efforts to site the facility yielded some important lessons: Providers have to control the tenor of the discussion and cannot allow themselves to be portrayed as enemies of the community. They must listen to and respect opponents and respond to emotional attacks non-confrontationally by rationally explaining how they will benefit the neighborhood.[367]

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[361] Id.

[362] NCLIHC at 1.

[363] Id.

[364] Id.; NCLIHC at 2.

[365] Allebaugh.

[366] NCLIHC at 1.

OHIO

Cincinnati

The City has recently estimated there to be roughly 1,800 people who are homeless in Cincinnati at any one time. Approximately 16,000-18,000 people are homeless at some point over the course of a year.[368] Most shelters are full and have waiting lists.[369] Emergency shelter space is available for up to 603 people and up to 32 families and there are 5 transitional apartments.[370] The City needs more emergency family shelter space, transitional housing, affordable housing and tenant assistance programs.[371]

In May of 1994, the City demolished the Milner Hotel, a 115-unit SRO hotel in the downtown, despite a lack of affordable hotel rooms in Cincinnati.[372] The City used federal Community Development Block Grant money to buy the building so that they could destroy it, ostensibly to remove urban blight, although the facility was not in bad condition.[373] The land was then "sold" to a wealthy developer for a small sum to be used for an upscale housing project. The Greater Cincinnati Coalition for the Homeless had fought for four years to save the hotel.[374] The City said it would consider building replacement SROs, but eventually decided not to, instead giving some money to local shelters. Between 40 and 60 of the units per night were used by homeless shelters to house homeless people when the shelters were full. There currently is no place shelters can use for overflow capacity in this manner.[375]

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[367] NCLIHC at 1-2; Allebaugh.

[368] City of Cincinnati Comprehensive Housing Affordability Strategy (CHAS), 1994 at 150. The City acknowledges that there may be more than 16,000-18,000 people who are homeless in a given year, Id. and one activist has put that number up to 21,000. Clifford, Pat, Greater Cincinnati Coalition for the Homeless, (telephone interview), November 27, 1995.

[369] Clifford.

[370] Cincinnati CHAS at 150-151.

[371] Id. at 179-180.

The Drop Inn Center Shelterhouse and Re-STOC sought City funding to help them create 20 transitional apartments for graduates of the Drop Inn Center's substance abuse recovery program in the inner-city neighborhood of Over-the-Rhine.[376] That neighborhood is experiencing rapid gentrification with the construction of upscale bars, restaurants and housing. When the

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[372] Shelter House Volunteer Group, "Cincinnati SRO Demolition Protested", Handsnet Forum, April 30, 1994.

[373] Clifford.

[374] Shelter House Volunteer Group.

[375] Clifford.

[376] Harpenau, Amy, Caracole, (electronic mail), November 13, 1995; Braykovich, Mark, "City asked not to fund addict home", Cincinnati Enquirer, September 17, 1994.

Over-the-Rhine Chamber of Commerce learned of the proposal, they adamantly opposed it at City Council meetings. The Chamber argued that it would attract bad people, that the neighborhood already had too many low income residents, and that the facility would hurt business.[377] In the fall of 1994, however, the Council rejected these arguments and approved the funding in a close vote. As of November of 1995, the project was nearing completion.[378]

Despite having demolished housing which served homeless people in the downtown, the City has recently passed measures designed to move homeless people from that area. In July of 1995, ordinances went into effect banning sitting on a sidewalk in a business district and banning solicitation that is within six feet of a building in a commercial area or that is aggressive. These ordinances were enacted with a sunset provision, November 16, 1995, in order to test their efficacy.[379] In October, however, a federal court issued a temporary injunction against the ordinances on First Amendment and Equal Protection grounds.[380] On November 8, without public hearing, the City Council repealed the sunset provision, making the law permanent, (although currently unenforceable as a result of the court order).[381]

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[377] Harpenau; Clifford; Braykovich.

[378] Clifford.

[379] City of Cincinnati Ordinance No. 156-1995, enacting Section 910-12 of Chapter 904 of Cincinnati Municipal Code.

[380] Greenwood, Scott, Greenwood and Associates, (telephone interview), November 30, 1995.

Cleveland

The City of Cleveland has 5,000-6,000 homeless people on any given night. It has 500 shelter beds, 300 overflow beds and 200 transitional beds to meet this need.[382] On many nights, even the overflow shelters are full.[383] There are very few SRO units left in Cleveland,[384] and the City has noted the need for transitional and affordable permanent housing.[385]

In the winter of 1993, Project HEAT, which runs the County overflow shelters, operated a shelter in a county warehouse. County workers protested, arguing that they might catch AIDS or tuberculosis from the people who slept there at night, even though they were gone by the time workers arrived in the morning. Project HEAT was forced to stop sheltering people at that site.[386] A temporary replacement site was found, despite neighborhood opposition led by a City Councilmember. The opposition argued that the area was in danger of becoming an "institutionalized social-service ghetto" and that an influx of poor people would eventually ruin the neighborhood.[387] That shelter closed in April of 1994.[388] The same City Councilmember successfully blocked a subsequent plan to move to the Cuyahoga County Archives Building because she did not want the shelter in her ward. Despite the fact that they have the money to rent a replacement facility, Project HEAT has been unable to do so because no neighborhood will let them in.[389]

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[381] City of Cincinnati Ordinance No. 368-1995, amending Section 2 of Ordinance No. 156-1995; Clifford.

[382] Davis, Brian, Northeast Ohio Coalition for the Homeless, (telephone interview), November 17, 1995.

[383] Mayors' Report at 50.

[384] Davis.

[385] Mayors' Report at 53-54.

[386] _Id._

In the summer of 1994, Cleveland's only big SRO closed down, depriving the City of 300 units of affordable housing. Advocates floated proposals to move the SRO to another location. The City Councilmember whose ward the new facility would be in, however, was adamantly opposed to siting an SRO in her jurisdiction. She organized opposition and led protests. The proposal eventually died as a result.[390]

Despite the City's contribution to the problem, a two-year investigation by the American Civil Liberties Union (ACLU) found that the City had an official city policy of actively discouraging homeless people from visiting certain areas of Cleveland. Homeless people who returned were driven by police officers to remote industrial areas and left. In October of 1994, The ACLU filed suit on behalf of four homeless people who had been victims of the policy.[391]

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[387] Staff, "Updating Past Grapevine Articles" The Homeless Grapevine, March-May 1995; Sartin, V. David, "Ohio City Puts Out the Unwelcome Mat", The Plain Dealer, November 17, 1993.

[388] The Homeless Grapevine.

[389] Id.; Davis.

[390] Id.

Portage County

There is no reliable estimate of the number of homeless people in Portage County, although there are thought to be a couple of hundred. There is only emergency shelter space for 11 people, and it is virtually always full. The County has recognized the need for 40 units of transitional housing.[392]

Portage Area Transitional Housing (PATH), a program of Catholic Charities, as well as a number of other organizations, have been working with the Portage Metropolitan Housing Authority (PMHA) to create transitional housing with services. In the summer of 1994, PMHA got HUD approval to redesignate a HUD grant to build such housing, for which PATH would provide the services.[393] PMHA found a site in the City of Ravenna, but in the fall of 1994, the City Council refused to sign a cooperation agreement with the Housing Authority as required by HUD, which advocates assert is because they simply did not want the project in their town.[394]

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[391] No Homeless People Allowed at 77; Clements v. City of Cleveland, filed October 4, 1994 (N.D. Ohio).

[392] Albanese, Tom, Portage Area Transitional Housing, (telephone interview), November 17, 1995.

[393] Id.

[394] Id.

PMHA then found some County-owned land in Ravenna Township, which they purchased at an auction in January of 1995. The property was zoned for multifamily/commercial use, an appropriate category for the project. PMHA drafted a site plan which called for 24 units of transitional housing, 13 units of more permanent housing for people who had lived in the transitional units, and some on-site services.[395] Some neighbors, however, argued against the plan, arguing that low-income people would ruin the character of the neighborhood.[396] They organized a petition, (signed largely by non-neighbors), wrote letters to the newspaper and wrote to the state urging that the County's request for funding for the project be denied. The local Schools Superintendent, at the behest of the School Board, argued that the project should be denied because he felt that low-income children use more school resources than other kids.[397] Finally, in June of 1995, the Board of Zoning Appeals turned down the site plan without giving a reason. PMHA and PATH appealed that decision to a local appeals court, which is due to rule in December of 1995. Meanwhile, supporters of the project are trying to rally additional support from local churches.[398]

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[395] Id. The idea is to create a self-reliant community of people committed to solving their problems who could assist each other. Id.

[396] The neighborhood is mixed commercial/residential. The opposition was led in part by a local businessperson who had wanted to put an auto salvage yard on the property before being outbid at the auction. Id.

[397] Id.

PENNSYLVANIA

Philadelphia

At least 4,750 people are homeless at any one time in the City, and 19,000-35,000 are homeless during the course of a year.[399] There are approximately 2,500 shelter beds in Philadelphia. Approximately 10% of requests for shelter go unmet.[400] Over the course of a year 1,100 mentally ill persons will stay in a Philadelphia shelters, and there are at least 5,000 mentally ill people who are either homeless or at risk of homelessness and need permanent housing. Existing residences for mentally ill persons are clearly insufficient to meet the demand.[401] There has also been a recent increase in the number of disabled people who are homeless or at risk to be homeless.[402] The City estimates there that over 70,000 disabled, mentally ill and mentally retarded people have a need for housing, out of a total of 350,000.[403]

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[398] Id.

[399] City of Philadelphia, Consolidated Submissions Plan (ConPlan), 43-44, Fiscal Year 1996.

[400] Mayors' Report at 67, 69.

[401] Philadelphia ConPlan at 46-47.

[402] Id. at 48.

[403] Id. at 50.

In 1990, Project H.O.M.E. began trying to construct single room occupancy (SRO) housing with services for disabled homeless men and women.[404] The City originally granted Project H.O.M.E. a permit in August of 1990, but two neighborhood organizations opposed to residential facilities for people with handicaps appealed the grant of the permit to the Zoning Board of Adjustment. The organizations asserted that the size of the building's rear yard was inadequate under the zoning code. The Zoning Board upheld the permit in July of 1991, but the neighborhood associations appealed to the Court of Common Pleas, which reversed. Project H.O.M.E. then appealed that decision to the Commonwealth Court, which reinstated the permit in November of 1992. The neighborhood associations appealed this decision to the state Supreme Court.[405] During the course of the litigation in state courts, potential residents and the United States filed suit in federal court alleging that the City's failure to accept the building's side yard, which was adequate to fulfill the purposes of the ordinance, as a substitute for its deficient rear yard was a failure to reasonably accommodate the housing needs of disabled people as required by the Fair Housing Act. In 1993, the federal court ruled that in failing to substitute side yard for rear, the City had failed to reasonably accommodate Project

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[404] United States v. City of Philadelphia, 838 F.Supp. 223 (E.D.Pa. 1993), aff'd w/o opinion, 30 F.3d 1488 (1994).

[405] Id. at 226-27.

H.O.M.E. This was so even though the Commonwealth Court had granted Project H.O.M.E. its permit, since that grant was useless because the case was still on appeal.[406] In 1994, a federal Court of Appeals upheld the district's court's ruling in favor of Project H.O.M.E.[407] Despite Project H.O.M.E.'s eventual victory in this case, the neighborhood associations and the City unnecessarily delayed work on the housing by almost four years.[408] This is all the more disturbing since even many city officials consider Project H.O.M.E. to be a model developer of housing and services for formerly homeless people,[409] and since the City itself reported that there was an inadequate supply of mental health housing and services and that this shortfall was a major cause of homelessness.[410] The housing is scheduled to open in April of 1996.[411]

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[406] Id. at 228-9.

[407] United States v. City of Philadelphia, 30 F.3d 1488 (1994).

[408] American Friends Service Committee, "Project HOME Wins, Finally!", The Nimby Report July-August 1994, 2.

[409] Rosenberg, Amy, "Grant tied to homeless facility", Philadelphia Inquirer, May 19, 1994.

[410] Mayors' Report at 39, 59. The City also noted that the lack of affordable housing in general has resulted longer stays at emergency shelters. Id. at 30.

[411] Project H.O.M.E., "Dwelling Place", September 1995 at 3.

Tarentum/Natrona/Brackenridge

Tarentum, Natrona and Brackenridge are three small, neighboring towns on the Allegheny River about 15 miles from Pittsburgh. No comprehensive survey of the number of homeless people in the area has been made. The Association of Churches takes homeless families into member churches on a rotating basis. There are no facilities for homeless men, although the AlleKiski Homeless Project places a small number of men in hotels.[412]

In 1993, the AlleKiski Homeless Project was offered the use of a building rent free in Tarentum to provide shelter for homeless people. At a zoning hearing regarding the project, residents complained bitterly that the project would attract bad people from outside the area, despite the fact that there was not enough shelter to house local homeless people. The project was vetoed by the board because it was to be within 1,000 ft. of another social services facility in violation of the zoning code.[413] The Homeless Project did not fight the decision because it wanted to establish a program with community support.[414]

In 1994, AHP offered to buy 3 buildings from a church in nearby Natrona to provide emergency shelter and transitional housing to homeless men. The parish was interested in selling, but asked AHP to hold a town meeting to inform local residents. As in Tarentum, the residents bitterly opposed the plan, arguing against both the need for the facility and the moral worthiness of the men the facility would have served. The church declined to sell due to the adverse reaction.[415]

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[412] Jones, Ruth, AlleKiski Homeless Project, (telephone interview), November 15, 1995.

[413] Id.; Brown, Charles, "Brackenridge homeless shelter plan meets opposition", Valley News Dispatch, A1, May 4, 1995.

[414] Jones.

The owner of a building containing a bar and restaurant and a few apartments in the Borough of Brackenridge offered to sell to AHP for use as emergency shelter for 14 men. AHP realized that a project with community support was not feasible, and decided to fight for the Brackenridge shelter.[416] They bought the building before contacting the Borough and hired an attorney.[417] Opposition quickly mounted. Opponents, including the Mayor, denied there were any homeless people in the area and were afraid that services would attract them from Pittsburgh.[418] They also argued that homeless people would bring AIDS and hepatitis to the town, and would create a climate of fear.[419] In addition, residents were upset because they felt they were not informed of the Homeless Project's intentions when they bought the property.[420]

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[415] Id.

[416] Id. Meanwhile, the Borough tried unsuccessfully to pressure the owner of the building not to sell. Id.

[417] Id.; Thurston, Belinda, "Homeless group won't give up on Brackenridge", Valley News Dispatch, July 30, 1995.

[418] Jones; Thomas, Mary Ann, "Homeless Shelter to get hearing in Brackenridge", Valley News Dispatch, March 21, 1995. For example, at a zoning hearing the Police Chief was quoted as saying "We don't need that here. Take it somewhere else." Brown.

[419] Brown.

The Borough building inspector then inspected the site. He declared the building to be unsafe and padlocked it, cut off all utilities and declared it to be abandoned.[421] The Homeless Project argued that it knew of the problems and were prepared to fix them.[422] As a result of the Borough's action, the water pipes froze and burst, the building heating and lighting systems have been heavily damaged and an infestation of cockroaches which the Homeless Project contracted with an exterminator to eliminate has been allowed to repopulate. In addition, the insurance carrier cancelled coverage when the Borough declared the building abandoned, forcing the Homeless Project to purchase more expensive poor risk insurance coverage.[423] Two zoning hearings were held, at which AHP argued that the zoning regulations violated the Fair Housing Act because they did not include a designation for homeless shelters and therefore there was no place in the Borough where such a facility could be sited.[424] The zoning board however, ruled that the code would permit a shelter in certain use zones, but not in the use zone the proposed shelter was located in. The board also refused to grant the Homeless Project an exception, despite the fact that a zone where use as a homeless shelter was allegedly permitted was only 50 feet away from the building.[425] After the vote, officials noted they were suspicious because they felt the Homeless Project tried to "sneak" the project into Brackenridge.[426] The case is currently on appeal to the Court of Common Pleas of Allegheny County.[427]

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[420] Thomas.

[421] Ritchie, Jim, "Brackenridge homeless shelter site condemned", Valley News Dispatch, A1, February 1, 1995; Jones, Ruth, AlleKiski Homeless Project, (telephone interview), August 1, 1995.

[422] Ritchie.

[423] Jones, August 1, 1995.

[424] Jones, November 15, 1995; Thurston.

VIRGINIA

Richmond

The City of Richmond has recently estimated that it has 4,000-5,000 homeless people and that the number is rising.[428] There are approximately 520 emergency and transitional beds, and the shelters are forced to turn people away nightly.[429] The City has identified a need for more SROs, board and care facilities and other affordable housing.[430]

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[425] Thurston, Belinda, "Homeless shelter zoned out", Valley News Dispatch, A1, June 2, 1995.

[426] Id.

[427] Jones, November 15, 1995.

[428] City of Richmond, Virginia, Comprehensive Housing Affordability Strategy, (CHAS), Fiscal Year 1994 at 48, 74; Price, Jim, Daily Planet Drop In Center, (telephone interview), November 16, 1995.

[429] Id.

The Daily Planet Drop In Center provides a comprehensive program of free substance abuse and mental health counseling, social work, employment training, primary health care, meals, referrals, homelessness prevention services and some shelter to homeless and urban poor people, (predominantly single men), in downtown Richmond. The Daily Planet provides the majority of many of these services to single males in the area, and served 6,000 different people last year alone.[431] It has operated out of a City-owned building with a $1/year lease for the last 10 years. The building, however, is becoming too small to meet their needs.[432] Therefore, the Daily Planet planned to build a 30,000 square foot state-of-the-art facility about 1.5 miles away on land which they have an option to buy. The property, however, is zoned for light industrial use, and the Daily Planet would need a special use permit to operate there. The Daily Planet has met with residents of a nearby middle-class neighborhood and representatives of a nearby university, but both groups are adamantly opposed to the proposed facility, and have even mentioned a possible law suit. These groups also have the support of the City Councilmember from their district.[433] Both the Planning Commission and the City Council will hold hearings on the Daily Planet's application for a zoning variance in December of 1995, although it appears as though they will vote to deny it. The Daily Planet has also looked into other possible sites, but has encountered Nimby opposition to each.[434]

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[430] Id. at 76.

[431] Price.

[432] Id. Additionally, the City has signed a contract to sell the building to Ethyl Corp., although as of now neither party is putting any pressure on the Daily Planet to move. Id.

III. Proposed National Legislation

Fair Housing Amendments

In August of 1995, Sen. Lauch Faircloth of North Carolina introduced a bill to overturn the Supreme Court's Edmonds decision legislatively.[435] Faircloth's bill would exempt from the requirements of the FHAA "any restriction relating to the maximum number of unrelated persons permitted to occupy a dwelling, if the purpose of the restriction is to restrict land use to single-family dwellings."[436] If passed, the bill would significantly diminish the applicability of the Fair Housing Act in single family neighborhoods.

In February of 1996, Representative Bilbray introduced a bill which would be even more destructive to the Fair Housing Act than the Faircloth bill. In addition to overturning Edmonds as the Faircloth bill would, the Bilbray bill would exempt any "reasonable" law "governing residential facilities, including [those] governing the proximity of such facilities to each other" or occupancy by a recovering drug addict.[437] This bill would largely repeal the Fair Housing Act with respect to its application to group homes for people with disabilities.

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[433] Id.

[434] Id.

[435] See discussion of City of Edmonds v. Oxford House below.

[436] S. 1132, 104th Congress, 1st Session, Section 2 (1995).

Congress is also considering a measure which would radically alter the way the Fair Housing Amendments Act is enforced. Currently, HUD receives complaints alleging violations of the Act. It then attempts to broker a voluntary conciliation between the complainant and the alleged offender. If an agreement cannot be reached, HUD completes its investigation to see if there is reasonable cause to believe a violation has occurred. If it appears that there has been a violation, a HUD administrative law judge will hear the case unless either party chooses to go to federal court. A HUD lawyer will represent the plaintiff in either forum unless the case meets DOJ's criteria, which usually means that the case involves a pattern or practice of violations.[438] A rider was attached to a Senate Appropriations bill to transfer all of the Department of Housing and Urban Development's responsibilities under the Fair Housing Act to the

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[437] H.R. 2927, 104th Congress, 2d Session (1996).

[438] National Law Center on Homelessness and Poverty, (Soon to be Published Handbook for Advocates and Service Providers), Part III; Cisneros, Henry, Secretary of Housing and Urban Development, (Letter to Sens. Hatfield and Bond), September 13, 1995.

Department of Justice. This would have had a devastating effect on enforcement, since DOJ does not have the field offices or the staff necessary to investigate and conciliate each complaint.[439] This provision, was modified, however, by a House-Senate Conference Committee. The current version would transfer HUD's responsibilities on April 1, 1997, provided that adequate personnel and resources are also transferred from HUD to Justice.[440] Both HUD and Justice, however, oppose this measure.

Molinari/Bilbray Amendment

The House of Representatives passed an amendment to the House Defense Authorization Bill offered by Rep. Susan Molinari (R-NY) which would destroy the ability of service providers to obtain surplus property at closing military bases by simply eliminating the law under which such transfers occur.[441] Dozens of non-profits around the country have been negotiating with LRAs to get property and services at closing bases under the BCCRHAA and Title V processes described in the Introduction. In several communities, good faith agreements have been worked out that will make available property and, in at least one case, jobs for homeless persons. If the Molinari/Bilbray Amendment becomes law, all of these agreements and negotiations between service providers and LRAs would be jeopardized, and there will no longer be any process for service providers to apply for property and no guarantee that communities with closing military bases will consider the needs of homeless persons in establishing redevelopment plans. Obviously, this would significantly diminish the ability of service providers to provide the new services that would be established if the Molinari/Bilbray amendment is defeated.

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[439] Cisneros at 2.

[440] H.R. Conf. Rep. No. 353, (to accompany H.R. 2099), Section 223E, 104 Cong., 1st Sess. (November 17, 1995).

[441] H.R. 1530, National Defense Authorization Act for Fiscal Year 1996, 104th Cong., 1st Sess. (1995); See discussion of Base Closure Community Redevelopment and Homeless Assistance Act of 1994 in Introduction.

McCain/Feinstein Amendment

The Senate added the McCain/Feinstein amendment to the Senate Defense Authorization Bill. This provision would remove HUD's authority under the BCCRHAA to veto an LRA's plan because it did not adequately consider homeless uses. HUD would still review an LRA's plan, but final authority to transfer rests with the Department of Defense (DoD), which is supposed to defer to the plan. DoD may continue to transfer property to homeless uses where the LRA designates such uses.[442]

Budget Reconciliation Bill

The House and Senate passed a Budget Reconciliation Bill which includes a complete repeal of Title V of the Stewart B. McKinney Homeless Assistance Act. While Title V is mandatory, under this bill the government would not have to make property that is surplus because it cannot be used by any agency, excess to each agency's needs, or underutilized available to homeless service providers. Moreover, the government would only be allowed to transfer property that is deemed to be surplus, and DoD and Veterans Administration property could not be transferred at all.[443]

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[442] H.R. 1530, National Defense Authorization Act for Fiscal Year 1996, 104th Cong., 1st Sess. (1995)(As passed by Senate).

IV. Proactive Efforts

Portland

The City of Portland has enacted a number of measures designed to bring its zoning scheme into compliance with the Fair Housing Act. In 1992, the City amended its definition of "household" so that an unlimited number of unrelated handicapped people could live together. This affords handicapped people the same treatment as related people.[444] In 1993 the City adopted comprehensive revisions known as "Strategies for Fair Housing" desigend to make it easier to site shelters and transitional and permanent housing. The American Planning Association gave the program an award in 1995, with one of its jurors calling it "the most progressive fair housing program in the country."[445]

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[443] H.R. 2491. Balanced Budget Act of 1995, 104th Cong., 1st Sess. (1995).

[444] Cited in City of Portland, Strategies for Fair Housing, Ordinance No. 167189, 1 (December 15, 1993)[hereinafter "Strategies"].

[445] Biver, Dan, "Portland, Oregon: Strategies for Fair Housing," Planning, Vol. 60, No. 4 at 10 (April 1995).

The first aspect of the program was a series of amendments to the zoning code. The City expanded the definition of residential uses by reducing the minimum term of occupancy from 60 to 30 days in order to allow more transitional facilities access to residential zones.[446] Moreover, SRO's with short stays are treated as hotels/motels in order to give equal treatment to establishments with similar uses.[447] Short term housing is allowed by right in certain areas and a shortened conditional use process was created for short term housing in existing buildings in residential areas.[448]

The City also adopted a Certification Process for shelters. The City believed that shelter siting is more appropriately addressed through a licensing process than through the zoning process. Therefore, the City created a scheme whereby providers of shelter could seek certification instead of trying to obtain a conditional use permit through the zoning process. To do so, providers must draft a Good Neighbor Plan which addresses such concerns as loitering and littering, and must attempt to meet with neighbors and address their concerns. If agreement cannot be reached, the shelter can obtain certification if they address neighborhood concerns in good faith. The process is designed to foster communication, and is not intended to allow neighborhood intransigence to prevent certification.[449]

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[446] Strategies at 6-11, (Code Chapter 33.920).

[447] Id.

[448] Id. at 12-21 (Code Chapter 33.285).

Lastly, the City enacted a policy designed to encourage the siting of publicly funded housing and facilities throughout the entire community in order to counter the tendency for such facilities to be located in low-income areas. To accomplish this goal, the City enacted criteria to discourage development of publicly subsidized housing and facilities in poor areas unless the benefits were to go to existing residents.[450]

Philadelphia

As a result of the City's failure to reasonably accommodate Project H.O.M.E.'s construction of SRO housing,[451] HUD held up special homeless initiatives money earmarked for Philadelphia.[452] After the City lost its appeal of the successful suit Project H.O.M.E. and the United States filed against it under the Fair Housing Act[453], the City agreed to accommodate Project H.O.M.E., and HUD agreed to give Philadelphia the special initiatives grant. HUD, however, required the City to agree to develop a legally binding policy to combat Nimbyism. The policy is intended to serve as a national model.[454] It has not yet, however, been drafted.[455] The Philadelphia example demonstrates that HUD may be willing to withhold funding from cities who limit or exclude services for homeless people based on Nimby opposition. Moreover, a national model policy on combatting Nimbyism might induce cities to think twice about the wisdom, ethics, and legality of shutting out services for those in desperate need.

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[449] Id. at 47-49.

[450] Id. at 50-51. One potential downside of preventing disproportionate concentration of facilities in low-income neighborhoods is that such neighborhoods are frequently attractive to service providers with limited budgets because of low rents. Wrigley, James, Oregon Advocacy, (telephone interview), April 2, 1996.

[451] See discussion of Fair Housing Amendments Act above.

[452] Rosenberg, Amy, "City gets $8 million grant for service to homeless", Philadelphia Inquirer, October 19, 1994.

[453] United States v. City of Philadelphia, 838 F.Supp. 223 (E.D.Pa. 1993), aff'd w/o opinion, 30 F.3d 1488 (1994).

San Diego

In 1986 the City of San Diego created a Single-Room Occupancy Task Force to respond to the fact that the City had lost approximately one-third of its SRO housing stock to conversion or demolition in the previous 10 years. At that time, it was virtually impossible to build SRO housing in the downtown, because it was considered inimical to tourism and downtown revitalization.[456] The Task Force, composed of members of both the public and private sectors, sought to facilitate the preservation and rehabilitation of older SROs and the construction of new ones.[457] By informing potential opponents to SRO housing of the facts that residents would be people who could pay there own way and contribute to resolving the shortfall of low-wage workers in the downtown, the Task Force was able to convince the City Council to waive various regulations to allow the construction of a new SRO.[458] San Diego also passed an SRO Preservation ordinance which prevented demolition of SRO housing without construction of replacement housing when the supply dropped below a certain threshold.[459] Additionally, the City reclassified SROs as commercial hotels, (which brought tax advantages to developers and relaxation of some building and fire code provisions), and provided builders with financial incentives such as reduced fees and low interest rate loans to underwrite rents for very low-income tenants in order to make construction

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[454] Rosenberg; Department of Housing and Urban Development and City of Philadelphia, "Grant Agreement", September 30, 1994, Attachment A, Paragraph 18.

[455] Hersh, Liz, Tenant's Action Group, (telephone interview), November 17, 1995. A steering committee comprising advocates, consumers, providers, and representatives of the City's Homeless Services and Housing Divisions is charged with the task of creating the policy. They hope to have it completed by the summer of 1996. Id.

[456] Advisory Commission on Regulatory Barriers to Affordable Housing, Not in My Back Yard: Removing Barriers to Affordable

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Housing, (Report to President Bush and Secretary Kemp), at 8-7 - 8-8, 1991, (Hereinafter "Removing Barriers").

[457] Id.

[458] Id.

[459] San Diego Municipal Code, Sections 101.1900-101.1910, Residential Hotel Preservation Regulations, November 16, 1987. The City Council also enacted protections for permanent residents of residential hotels to be demolished or converted, including financial assistance. San Diego Municipal Code, Sections 101.1920-101.1928, Residential Hotel Room Permanent Resident Relocation Assistance Regulations, November 30, 1987.

of SRO housing a profitable venture for developers.[460] As a result of these changes, almost 2,000 SRO units were added in the downtown area from April 1987 to December 1990.[461]

Queens

In 1987, the Koch Administration proposed building a homeless shelter in the Briarwood section of Queens. The Briarwood Community Association organized an opposition campaign, and fought the shelter to the State's highest court before losing in 1989.[462] Faced with the inevitability of the siting of the shelter, local opponents decided to work with the shelter in order to ensure that it served the shelter residents more effectively than other city shelters without negatively impacting the community.[463] Neighbors, including former opponents, participated in designing the shelter and in suggesting and planning the services to be offered there.[464] After the shelter opened, neighbors volunteered to help staff a number of shelter programs. One former leading opponent recounted that: "[w]e decided to make the best of it, [we decided] that having a model shelter would be good for the shelter residents and the residents of Briarwood"[465]. This statement neatly explains why Briarwood provides an example that all sides in similar Nimby disputes have an strong interest in replicating.

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[460] Removing Barriers at 8-7 - 8-8.

[461] Id.

[462] Hernandez, Raymond, "Shelter Foes Reorganize as Helpers", New York Times, B1, B2, March 24, 1993. The City faced at least 44 other suits from 1988-1993 by residents of other neighborhoods seeking to block efforts to house homeless people. Id.

[463] Id.

[464] Id.; Hevesi, Dennis, "Unwanted Homeless Meet an Unusual Backyard", New York Times, B3, April 23, 1992.

Veterans Administration

In November of 1989, the Missouri Veterans' Leadership Program was providing transitional housing for homeless veterans out of a flophouse in St. Louis. The Director of a local Veterans Administration (VA) Hospital offered the Leadership Program the use of three residential buildings on the grounds of the Hospital. Since this was an unprecedented offer, it took about 10 months for the VA bureaucracy to approve the arrangement.[466] The lease was signed in September of 1990, and the buildings continue to house 25 veterans at a time, and 60-65 over the course of a year.[467] Most of the residents are referred from the hospital, and all residents must volunteer at the hospital.[468] Similar arrangements between service providers and the VA have been created at two VA hospitals in Los Angeles, one in Minneapolis, and one in Massachusetts.[469] These hospitals have provided a wonderful example of how a government agency can go out of its way to serve homeless people in underutilized facilities, and actually receive help in return.

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[465] Hevesi, quoting Marianne Loser.

[466] Elmore, Bill, Missouri Veterans Leadership Program, (telephone interview), November 15, 1995.

[467] Id.

[468] National Alliance to End Homelessness, "Transitional Programs for Veterans", Making the Transition, October 1992.

[469] Elmore.

Redmond

In 1991, the local YWCA proposed building Family Village, a transitional residence for homeless families. The YWCA found a location that was perfect for such a facility, as it was near a school, public transportation and businesses. There was no other housing on the block. After selecting the location, the YWCA distributed fliers in the neighborhood announcing their plans and held an informational meeting where residents could give input. They explained that the residents must work or be in school or job training, and that the program would also include child care.[470] Moreover, the facility was specifically designed to integrate well architecturally with the surrounding community.[471] Not only was there virtually no objection from residents, but many volunteered to assist with the project.[472] The facility opened in March of 1993. It continues to enjoy the support of local churches, businesses and residents from whom it receives donations and volunteer workers. Family Village attributes the quality of these relationships at least in part to the fact that it has tried to be sensitive to the community from the outset.[473] The City of Redmond's response to Family Village serves as a model proactive response that other communities should emulate. Unfortunately, those communities that build housing and services or allow them without opposing them frequently do not get the attention they deserve, as the media tends to concentrate on contentious siting battles.

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[470] Lanoue, Elise, "Redmond Offers Help, Not Opposition, To Homeless", The Seattle Times, C1, July 8, 1991.

[471] Dering, Mary Lou, Family Village, (telephone interview), November 30, 1995.

[472] Lanoue. One person did state that he did not want his children playing with "those type of kids." Id.

V. Important Legal Rulings

City of Edmonds v. Oxford House, Inc.

The City of Edmonds cited a residence for recovering substance abusers which housed 10-12 people under a local zoning provision. The zoning law barred more than five unrelated people from occupying a single family dwelling but placed no limits on the number of related people who can occupy such a dwelling.[474] Residents of the group home argued that the Fair Housing Act Amendments of 1988, which prohibit discrimination in housing on the basis of race, religion, sex, family status, national origin or disability, applied in this case.[475] The City argued that the zoning provision fell within an exemption to the FHAA which states the Act does not limit "the applicability of any reasonable. . . restrictions regarding the maximum number of occupants permitted to occupy a dwelling."[476] The Supreme Court, found that the exemption only exempts restrictions that apply to all occupants, whether related or not.[477] Having found that the Act applied, the Supreme Court remanded the case to determine whether the City's actions violated the law.[478] This case is extremely important, since it precludes cities from using limits on the number of unrelated people who can live together to completely evade the requirements of the FHAA.

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[473] Dering.

[474] City of Edmonds v. Oxford House, Inc., No. 94-23, slip op. at 2, (U.S. S.Ct., May 15, 1995).

[475] Id. at 2-3. Recovering non-using drug addicts are handicapped for the purposes of the FHAA. Id. at 3.

Turning Point v. City of Caldwell

Turning Point, a shelter for homeless families in Caldwell, Idaho, sued the town in federal district court alleging that, in limiting the number of occupants, the town violated the Fair Housing Act.[479] The court found that Turning Point had established that 75% of its residents and at least one member of virtually every family had a serious physical or mental impairment that affects a major life activity and were therefore protected by the FHA. The court held that although there is no other case law detailing how widespread handicaps must be, the number was sufficient in this case to afford Turning Point protection under the Act.[480] This ruling is particularly noteworthy because it recognized that all residents need not be handicapped in order to be protected by the Act, a conclusion that is essential for the protection of families, since it is rare that all members of a family are handicapped.

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[476] Id. at 2-5.

[477] Id. at 10-11.

[478] Id. at 11-12.

[479] See discussion of the facts of the case above.

Western Presbyterian Church v. Board of Zoning Adjustment[481]

Western Presbyterian Church has provided food for homeless people on Church property for over 10 years. The Church moved to a new location a few blocks away in the spring of 1994. Neighbors complained to the zoning administrator about the Church's plans to provide food at the new location. The administrator decided that zoning ordinances forbade the continuation of the feeding program at the new location. On March 2, 1994, the Board of Zoning Affairs upheld the zoning administrator's decision.[482] The zoning codes allowed "any other accessory use. . .customarily incidental to" the use of the building as a church.[483] Thus, the City necessarily held that the feeding program was not an "accessory use."[484]

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[480] Turning Point v. City of Caldwell, Civ. 94-0169-S-LMB, 23, (D. Id. Dec. 28, 1994).

[481] See discussion in District of Columbia section above.

[482] Western Presbyterian Church v. Board of Zoning Adjustment, 849 F.Supp. 77, 78 (D.D.C. 1994); Western Presbyterian Church, Civil Action No. 94-0749, Memorandum Opinion and Order, 2-7, (D.D.C. 1994).

In response to the Church's challenge to the application of the ordinances as a violation of the First Amendment and the Religious Freedom Restoration Act, a federal District Judge granted a preliminary injunction which prohibited enforcement of the regulations while the Court decided the merits.[485] The Judge later ruled for the plaintiffs, granting the Church a permanent injunction.[486] In so doing, the Court found that the feeding program was motivated by religious belief and therefore was religious conduct protected by the First Amendment and the RFRA.[487] Since this religious conduct was substantially burdened by the application of the zoning ordinances, and since the City conceded that it had no compelling governmental interest in inflicting this burden, the Court found for the plaintiffs.[488] The Court noted that "[o]nce the zoning authorities of a city permit the construction of a church in a particular locality, the city must refrain, absent extraordinary circumstances, from in any way regulating what religious functions the church may conduct.[489]

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[483] Western Presbyterian Church, Memorandum Opinion and Order at 4-5; 11 D.C.M.R. §502.7.

[484] Western Presbyterian, Memorandum Opinion and Order at 5.

[485] Western Presbyterian, 849 F.Supp. 77 (D.D.C. 1994).

[486] Western Presbyterian, Memorandum Opinion and Order.

[487] Id. at 13.

[488] Id. at 15-20.

First Assembly of God of Naples, Florida v. Collier County, Florida[490]

In 1991, the Collier County, Florida Code Enforcement Board shut down a shelter run by a local church on its property. The church is located in a district zoned for multi-family residential use, a category which allows churches and their "customary accessory uses."[491] The Board concluded that the maintenance of a homeless shelter was not a "customary accessory use" and that the shelter violated applicable zoning rules since it housed too many people and since the church had not applied for a permit.[492]

The Church and some of the residents of the shelter brought suit alleging procedural due process and free exercise clause violations. The district court granted summary judgment for the County and plaintiffs appealed to the Eleventh Circuit, which affirmed.[493] The Eleventh Circuit found that although the procedures followed by the County may have violated state law, this violation did not rise to the level of a violation of the plaintiffs' procedural due process rights.[494] The court also found that the zoning laws were neutral and of general applicability and therefore, its incidental effects on religious practice did not need to be justified by a compelling state interest.[495] Since the court further found that the burden imposed on the church by the imposition of the law was less than the burden would have been on the County if it was forced to allow the shelter, it held that there was no violation of the free exercise clause.[496]

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[489] Id. at 16.

[490] See discussion of Collier County, Florida above.

[491] First Assembly of God of Naples, Florida v. Collier County, Florida, 20 F.3d 419, 420 (1994), modified 27 F.3d 526 (1994), cert. denied 115 S.Ct. 730 (1995).

[492] Id.

[493] Id. at 420-21.

The Church petitioned the U.S. Supreme Court to review the Eleventh Circuit's decision, arguing that allowing government officials to determine what uses of churches are "customary" is discriminatory vis-a-vis unconventional religious practices and therefore violative of the free exercise clause.[497] The plaintiffs also asserted that since the Religious Freedom Restoration Act has restored the compelling state interest to incidental governmental intrusions upon the free exercise of religion, the facts of this case should have been reconsidered under that standard.[498] The Supreme Court, however, declined to hear the case.[499]

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[494] Id. at 421-22.

[495] Id. at 423.

[496] Id. at 424.

[497] Petition for a Writ of Certiorari, First Assembly of God of Naples, Florida v. Collier County, Florida, 7-13, November 1, 1994.

The issues raised by *First Assembly* and *Western Presbyterian* are extremely important, since so many of the services provided to homeless people are located in places of worship. If courts were to accept the rationale of *First Assembly* in favor of that of *Western Presbyterian*, local governments would be able to increase their ability to define permissible forms of religious expression, and many service providers might get shut out of certain neighborhoods. *First Assembly*, however, did not address the Church's rights under the Religious Freedom Restoration Act, which provides more protection to religious expression than does the First Amendment.

City of Peekskill v. Rehabilitative Support Services

The City of Peekskill sought a preliminary injunction to prevent a service provider from acquiring three condominium units for use as transitional housing for nine homeless mentally disabled persons. A federal district court rejected the City's claims that it would suffer irreparable harm through increased demand for services, loss of value to other condominiums, decline in tax base through departure of families, impairment of its zoning plan, and adverse environmental effects and its claim that it had become a "dumping ground" for the County's public housing projects.[500] In an eloquent refutation of the city's "fair share" argument, the Court noted that:

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[498] *Id.* at 23.

[499] *First Assembly*, 115 S.Ct. 730 (1995).

> Peekskill should be commended for its past efforts. Every community has at least a moral duty to share in the care of those whose disabilities place them in situations of great need. . . However, plaintiff's past efforts to provide transitional housing do not create grounds for refusing to provide any more such housing. . . In short Peekskill's message is: no more in my back yard. . . [W]e give such arguments little consideration.[501]

U.S. v. Village of New Hempstead

The United States Army leased unutilized property to the Rockland Community Action Council (ROCAC), to house homeless families pursuant to Title V of the McKinney Act. The Village of New Hempstead, New York, in which the property was located, sued in state court to prevent the transaction, alleging among other things that the land was not zoned for the use ROCAC intended. The court granted the Village a preliminary injunction, and the Village cited ROCAC for violating the zoning code.[502] The United States then sued the Village in federal court, and the state court dismissed the Village's action in deference to the federal case.[503] The United States argued in its action that the Village's zoning laws were inapplicable because they were preempted[504] by a federal regulation enacted pursuant to the McKinney Act which states that a Title V lessee "is not required to comply with local zoning requirements".[505] The court agreed with this rationale, holding that Congress would sanction the regulation's exemption of McKinney property from local zoning laws and that the McKinney Act would be subverted if housing providers on surplus federal property had to comply with zoning laws.[506]

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[500] City of Peekskill v. Rehabilitative Support Services, Inc., 806 F.Supp. 1147, 1150-51, 1155 (S.D.N.Y. 1992)

[501] Id.

[502] U.S. v. Village of New Hempstead, N.Y., 832 F. Supp. 76, 77-78 (S.D.N.Y. 1993).

This case is important because it prevents local governments from using their zoning codes to preclude service providers from serving homeless people on land leased from the federal government under Title V. Although this case was based on a regulation enacted pursuant to the McKinney Act which explicitly states that zoning laws are inapplicable to Title V lessees, the Act itself would preempt local provisions which interfere with the operation of the law.

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[503] Id. at 78.

[504] Under Article IV of the United States Constitution, (the supremacy clause), federal law "preempts" or renders inapplicable conflicting state or local law.

[505] Village of New Hempstead at 78; 45 C.F.R. 12a.9(b)(10).

[506] Village of New Hempstead at 79.

Potomac Group Home v. Montgomery County, Md.

Montgomery County zoning law permitted group homes for eight or fewer people to locate in residential areas as a matter of right. However, the County's licensing law required providers to notify neighbors and neighborhood civic organizations of plans to operate a group home on a given site at the time of the license application and of each renewal, and required that residents have an opportunity to comment on the proposed use's compatibility with the neighborhood.[507] Potomac Group Home, which provides community-based housing and support services to elderly people, received opposition from neighbors to the licensing of its homes. Neighbors argued that the homes would lead to the demise of the neighborhood and lower property values. Potomac challenged the licensing provision under the Fair Housing Act, arguing that there was no similar requirement for residences to be occupied by people without disabilities.[508] The court held for Potomac, ruling that the law created an explicit classification based upon disability and that the classification was not supported by any legitimate governmental interest.[509] In so doing, the court rejected the County's argument that the rule was designed to promote group homes' integration into the community, reasoning that the notices required by the law had actually galvanized neighborhood opposition and that the law's intent to facilitate community comment on a home's compatibility with the neighborhood was discriminatory.[510] This case is important because neighborhood notification laws are not uncommon, and they may afford neighbors additional time to organize opposition.[511]

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[507] Potomac Group Home v. Montgomery County, Md., 823 F. Supp. 1285, 1289 (D. Md. 1993).

[508] Id. at 1288-90.

[509] Id. at 1296.

VI. Recommendations

Federal Government

Congress should reject attempts to limit the availability of base closure and surplus, excess or underused property to providers of services to homeless people. The availability of such property is critical to the effort to create services to meet the needs of homeless people for years to come. Moreover, Congress should reject attempts to limit the applicability and enforcement of the Fair Housing Act. Rather Congress should amend the Act to specifically include homeless people as a protected class. As this report makes clear, service providers attempting to establish housing for homeless people face exactly the same barriers as those who seek to establish housing for disabled people. While homeless people are already protected to the extent that they are disabled or perceived to be disabled, an explicit legislative recognition of homeless people as a protected class would secure the right of all homeless people not to be discriminated against in their access to housing.

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[510] Id. at 1296-1297.

[511] See discussion of issues related to the timing of informing prospective neighbors in Recommendations for Service Providers below.

The Clinton Administration has recognized the importance of combatting Nimby responses in promoting the overall goal of eradicating homelessness, and has stated its commitment to "vigorously enforce the housing rights of all persons, including the homeless and those who seek to provide housing and other services for the homeless."[512] HUD and DOJ, the agencies responsible for enforcing the Fair Housing Amendments Act and other relevant civil rights laws, must ensure that no illegal discrimination against service providers goes unchallenged. In addition to redressing the destructive effects such discrimination has upon individual victims, federal action serves to deter other parties who would seek to exclude service providers from their cities or neighborhoods.[513] HUD and DOJ should also adopt a civil rights policy statement which builds and expands upon the one cited above. This simple act would go a long way toward further discouraging cities from enacting discriminatory policies.

Through its role in the allocation of funds, HUD is uniquely positioned to provide additional deterrence to cities considering discriminating against providers of services to homeless people. HUD should withhold funds, as it did in Philadelphia, from state and local governments which discriminate against service providers or refuse to remove barriers to such services.[514] HUD should also include and enforce respect for civil rights as a criterion in funding decisions wherever HUD has the authority to do so. For example, HUD should freely exercise its authority to disapprove a Consolidated Plan, a jurisdiction's application for federal funds under HUD's formula grant programs, which contains inaccurate civil rights certifications. Furthermore, HUD should include civil rights requirements in proposed legislation and regulations. For example, HUD should include civil rights within any continuum-of-care plan requirement. Conversely, HUD should establish incentives for states and localities which do remove barriers to homeless services.[515]

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[512] Interagency Council on the Homeless, Priority: Home! The Federal Plan to Break the Cycle of Homelessness, 86-87, May, 1994.

[513] Of course, federal enforcement of the civil rights laws must always respect limits imposed by the First Amendment, an issue which has sparked much controversy in some cases. See discussions of Berkeley and Gramercy Park above.

Nimby opposition is frequently a direct result of ignorance and unfounded fears about the effects service providers will have upon a neighborhood. Moreover, there is evidence which suggests that increased knowledge of the problems homeless people face can decrease opposition to services.[516] This clearly implies that service providers should seek to educate their prospective neighbors. However, residents who are afraid of the effects of a service facility proposed for their neighborhood are may not be receptive to facts which demonstrate that their fears are unfounded. Therefore, to the extent that these fears can be alleviated before service providers even propose to site a facility, Nimby opposition can be greatly reduced. As the United States Conference of Mayors has suggested, one way to accomplish this goal would be to carry out a national education campaign involving both federal and local governments.[517] This campaign would explain the overwhelming need for such services and address common fears of local residents.[518] The federal government should also draft model laws and ordinances for states and localities to adopt to facilitate the siting of services.[519] Similarly, HUD, the agency which receives complaints under the Fair Housing Amendments Act and similar anti-discrimination laws, should actively seek to educate zoning and other local officials, the real estate management industry and developers about the protections those laws afford.[520]

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[514] While the City of Philadelphia violated the Fair Housing Amendments Act, discriminatory limits on service providers may also contravene the Equal Protection Clause, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and in the case of services provided by religious institutions, the First Amendment and the Religious Freedom Restoration Act. Therefore, HUD need not confine its actions to violations of the Fair Housing Amendments Act.

A similar suggestion was made to President Bush and HUD Secretary Kemp with respect to affordable housing by the Advisory Commission on Regulatory Barriers to Affordable Housing. Removing Barriers, Executive Summary at 10.

[515] See Removing Barriers, Executive Summary at 10-11.

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[516] Dear, M. and Gleeson, B., "Community Attitudes Toward the Homeless", Urban Geography, Vol. 12, No. 2, 155, 172 (1991).

[517] U.S. Conference of Mayors, Ending Homelessness in America's Cities, 62, July, 1993.

[518] Id.

[519] See Removing Barriers, Executive Summary at 13.

State Governments

In 1969, the Massachusetts Legislature passed Chapter 774, the "anti-snob zoning law," in order to counter the impact of local zoning decisions which denied building permits for affordable housing developers.[521] Under the law, local zoning boards in jurisdictions where less than 10% of the housing stock was affordable could only deny permits if the project posed a clear threat to health and safety, and builders denied permits could get an override of the denial by the Massachusetts Housing Appeals Committee.[522] This effort was strengthened in 1982 when the Governor issued Executive Order 215 instructing state agencies to withhold development assistance awards from communities which unreasonably restricted housing growth, particularly for low-income residents. A subsequent Local Initiatives Program encouraged localities to remove regulatory impediments by exempting them from developer appeals if the newly created housing brought the locality's stock above the 10% threshold.[523]

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[520] Beggs at 22.

[521] Removing Barriers at 7-3 - 7-4.

[522] Dorius, Noah, "Land Use Negotiation, Reducing Conflict and Creating Wanted Land Uses", Journal of the American Planning Association, Vol. 59, No. 1, 101, 102, Winter 1993. As of 1993, 90% of local denials had been overturned on appeal, largely because many communities were arbitrary in their denials. Id.

Similar results were obtained through the courts in New Jersey. In Southern Burlington County NAACP v. Township of Mt. Laurel, the state Supreme Court held that the state constitution imposed a duty upon every developing community to allow its fair share of the region's low and moderate income housing.[524] The Mt. Laurel doctrine was subsequently broadened in later court cases to include all communities.[525] As a result of these cases, builders can obtain permits for affordable housing construction even where such permits are initially denied by localities, either through a new executive branch agency, or through the courts.[526]

A regime similar to the Massachusetts and New Jersey responses to Nimby-based exclusion of affordable housing could easily be created with respect to homeless services. A state legislature could create a mechanism to limit a locality's ability to exclude a provider if the locality does not already have enough of that type of service to meet the need. State-level entities have the advantage of being able to see the cumulative effects of individual Nimby denials of services. This ability to see the need might allow a state entity to approach the problem without as much of the emotion that characterizes local decision-making on these issues.

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[523] Removing Barriers at 7-3 - 7-4.

[524] 67 N.J. 151 (1975).

[525] Removing Barriers at 7-4 - 7-5.

[526] Id.

The New York State Site Selection Law also may provide some guidance for states trying to prevent the exclusion of services from local communities. Local zoning provisions for areas zoned for single family residences will typically define a family as an individual or two or more related persons or a group of not more than some number of persons, (typically about five), who need not be related living together in a dwelling unit. This frequently hamstrings efforts to site group homes, which are typically economically unfeasible when they only contain five residents. The Site Selection Law defines community residences which house 4-14 people as single family dwellings for the purposes of local zoning codes,[527] thereby preventing localities from using those codes to shut community residences out of neighborhoods zoned for single family residences.[528]

California law requires each city and county to compile a housing element, which includes a review of the jurisdiction's needs for emergency and transitional housing.[529] Similarly, Illinois requires municipalities to prepare plans to meet their need for group homes.[530] Analogous laws might allow providers to challenge municipal decisions which contravene their own plans. They also might take political pressure off of local officials, who can tell their constituents that they have to accept facilities in order to comply with state law.

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[527] NYCRR mental hygiene, Sec. 41.34.

[528] If the residents are disabled or perceived to be disabled, the Fair Housing Amendments Act may provide similar protections, since that law requires localities to make a reasonable accommodation in the application of their laws. This would include reasonably altering the limit on the number of unrelated people who could live together in a single family residence zone. See discussion of Fair Housing Amendments Act in Introduction and Important Legal Rulings sections.

States can also attempt to influence local decision-makers by providing incentives for localities to accept service facilities without opposition. This can be done by, for example, offering to fund other amenities in exchange for the locality permitting a provider to locate there.[531]

Local Governments

Local governments are usually the decision-making body in fights over efforts to site facilities. Therefore, localities need to recognize the human, social and economic costs to the community associated with excluding services and the falsity of the myths concerning community impact, to explain these factors to local residents and to do the right thing despite community opposition. A specific step localities can take is to amend their zoning codes to allow service facilities, with reasonable restrictions, as a matter of right.[532] This might engender less community pressure on local government than an effort to site a specific facility, since the perceived harm to neighbors would be hypothetical in that no facility would be contemporaneously planning to move in nearby. It would also greatly facilitate the siting of services and would probably avoid the lengthy and costly litigation that frequently ensues when a provider tries to site a facility in a locality that has no zoning provision for social services. Localities can also create standing citizens' committees which would represent all interests that may be affected by social service facilities. The goal would be to provide a forum to mediate complaints about existing programs and aid in the siting of new ones in a non-confrontational way.[533]

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[529] Dear at 296.

[530] Id.

[531] Beggs at 31.

Service Providers

A decision to site a facility at a location where there will be Nimby opposition raises a variety of different concerns. The first decision, of course, is whether the site is worth the fight. Assuming that the answer to that question is "yes," a provider needs to give serious thought to the strategy and tactics it will use in order to overcome expected opposition. Since every location, neighborhood and service provider is different, the following section is intended to raise issues for consideration, not to provide "rules" for fighting Nimby battles.

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[532] Dear at 296.

[533] Hayes, Robert, "Soapbox", The New York Times, Section 14, 17, April 24, 1994.

However, in no circumstance should providers underestimate possible opposition.

Service providers should be aware that the level of opposition is likely to vary according to characteristics of the neighbors. In general, middle and upper class neighborhoods are more likely to oppose facilities than less affluent ones.[534] The study of voting patterns in the D.C. initiative concluded that opposition was greatest in precincts with better educated, home-owning, and politically conservative residents, and support was greatest in predominantly black, lower socioeconomic status precincts and politically liberal precincts. The study suggests that political and economic neighborhood characteristics are more important than psychological characteristics like anti-authoritarianism and benevolence.[535] Another study found that characteristics of individuals, but not neighborhood type, predicted likelihood of political action for or against a facility.[536] Likelihood of taking action against a facility increased with gross family income, and married households were more likely than others to take such action.[537]

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[534] Beggs at 17; Dear at 293; Arens at 242; Hogan at 445.

[535] Henig at 749-50.

[536] Currie, Raymond, et. al. "MAYBE ON MY STREET: The Politics of Community Placement of the Mentally Disabled", 25 Urban Affairs Quarterly 298, 312 (Dec. 1989).

[537] Id. at 311.

A decision that must be made at the outset is how to approach the community. One option is to take a collaborative approach, in which the provider seeks contact with the community in order to work together to provide services in a manner acceptable to both. The opposite, autonomous approach emphasizes the rights of the clients to live in a community and therefore doesn't necessarily involve contact with the community in trying to site a facility.[538]

One observer of neighborhood opposition to group homes has stated that:

> [g]reater neighborhood support is enjoyed by group home providers who. . . invite the local government to meet and discuss the group home program, who inform neighbors of the chosen location, who use local contacts to monitor popular sentiments, who manage to get the neighbors at least somewhat involved (at least informed and in contact with the provider agency), and who hold an open house for friends and neighbors, once the home is established. Perhaps the most startling observation is that relatively few providers follow this plan.[539]

The issue of when or whether to tell neighbors ahead of time, (where this is not required by law), however, is a particularly difficult one that should be carefully considered. On the one hand, it is extremely difficult if not impossible to establish a facility without the neighbors finding out, so attempting to do so might only raise additional fears, suspicions and anger.[540] On the other hand, a provider doesn't want to give opponents time to mobilize.[541] Some evidence suggests that a collective or organized neighborhood reaction, (which is associated with the most intense opposition), is more likely if neighbors learn of the proposed facility at least three months before it is scheduled to start serving clients, so that additional warning may lead to increased organization and therefore increased opposition.[542] Moreover, the very act of arranging to meet with neighbors may facilitate neighborhood organization against the project.[543] Such opposition is also more likely to be successful if the neighbors find out about the project before the purchase or rental agreement is signed, because they can influence the owner.[544] The same study, however, concluded that opposition is more likely to organize when someone other than the provider informs the neighbors,[545] which suggests there is risk in withholding information as well as in providing it.[546]

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[538] Dear at 294. This approach relies on existing legislative authority to site a facility in a given location. Id.

[539] Beggs at 4, quoting Hogan, Richard, "Gaining Community Support for Group Homes" (1985)(unpublished).

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[540] Beggs at 4-6. There is evidence from a study of neighbors' reactions to group homes that suggests that even neighbors who found the home acceptable at least one year after it had opened had complaints that neighbors were not adequately consulted in the siting process. Wahl at 255.

[541] Beggs at 4.

[542] Hogan, "Community Opposition to Group Homes" at 444-46. Hogan analyzed 171 attempts to site group homes for mentally retarded and mentally ill persons in New Jersey. Id. at 442-43. Obviously, the lessons learned from studying the siting of these facilities may not be directly applicable to the siting of other kinds of facilities, but they do raise significant issues which must be considered.

[543] Id. at 448.

[544] Id.

Providers should not assume that the existence of vocal opponents means that the entire community is against the project. A study of attitudes toward placement of community mental health facilities in Winnipeg, suggests that Nimbys may have political influence disproportionate to their numbers.[547] The study found that while there were negative attitudes toward such facilities, twice as many people reported that they would support placement of a facility in their neighborhood as said they would oppose one.[548] These findings suggest that Nimby opposition does not necessarily represent the will of the majority of a given community.[549] Thus, this research should encourage service providers to actively seek out and mobilize supportive neighbors.[550]

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[545] Id. at 446.

[546] The study also found that if something else is happening in local politics there will tend to be more opposition since neighbors will be more aware of local issues and more predisposed to collective action. This may have implications for the timing of a proposed project. Id. at 448.

[547] Currie.

[548] Id. at 307.

[549] Although the study did not deal with services for homeless people specifically, its lessons are instructive both because of the overlap in services for mentally ill and homeless people and because of the similarity in reactions to these types of facilities.

In many instances, service providers will need the support of political bodies in order to site their facilities. Ultimately then, success may come down to whether the relevant political body will withstand community pressure. One observer has suggested involving politicians in finding a site so that they are invested in the project from the outset.[551] Providers should line up whatever political support they can for the politicians who are on their side, and do so as early as possible, in order to strengthen their resolve.[552] At hearings, they should focus on convincing the decision makers, not the neighbors.[553] Providers should also understand that siting controversies sometimes take a long time to settle, and the winner frequently is the side with the most stamina. Therefore, providers need to plan for and keep their supporters involved over the long haul.[554]

Providers can seek to influence public opinion in a variety of different ways. Community education and outreach campaigns can alleviate neighbors' fears and establish a dialogue.[555] A study of opposition to facilities for mentally disabled people found that such opposition tended to be associated with specific negative attitudes toward that population, such as that they are more dangerous than other people.[556] Given the specificity of the attitudes underlying opposition, community education may be particularly valuable since it need only address specific concerns rather than general political predispositions.

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[550] Currie at 316.

[551] Beggs at 9-10, quoting Majak, Barbara, Alameda County Community Mental Health Services.

[552] Lozier, John, "Overcoming Troubled Relationships Between Programs and the Community", Under the Safety Net, Brickner, Phillip, et. al. ed., 43, 1990.

[553] Beggs at 5.

[554] Beggs at 5; Dear at 290.

A provider can gain credibility and needed skills by creating an advisory board of local leaders, and can possibly even defuse opposition by appointing opponents. The board should be appointed before opposition crystallizes, so that potential members will not be scared off.[557] Providers can also try to utilize the press, but should be wary since the press may tend to emphasize controversy since controversy sells. When a siting struggle is covered, providers should be prepared to respond, by for example, organizing a letters-to-the-editor campaign.[558] Providers can gain sympathy for their position by bringing someone who will be served by the project, or is being served by a similar one, to speak at private meetings or public hearings.[559] They should also emphasize that there will be community benefits in addition to the services provided, such as jobs for local contractors and residents and outside funding to be spent in the community.[560]

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[555] Dear at 294-95. One way to do this is to go door-to-door. This allows the provider to answer questions, listen to concerns, and find out who supporters and opponents are. Lozier at 43.

[556] Id. at 312. On the other hand, those likely to take supportive action typically believed that social services should be in neighborhoods, were politically liberal, and believed government spending on social programs should have a higher priority.

[557] Dear at 295.

[558] Lozier at 43.

In any meetings, hearings or other dealings with the community, providers should be well prepared. They should know what neighbors fear and have facts and figures at their disposal to dispel those fears.[561] They should also ensure that public hearings are structured so that they do not get out of control and generate bad press.[562] Providers should always be honest to assure their credibility, since neighbors will already be suspicious.[563] An agency with a good reputation is more likely to be accepted, particularly if it can point to other successful facilities.[564] Additionally, providers should try to educate rather than moralize, since opposition is likely to come from fear of the unknown, and such a debate can make compromise seem to be an admission of guilt.[565] Providers themselves should be willing to compromise in the operation of the facility in order to gain support where the compromise will not affect the services provided.[566] Furthermore, to the extent practicable, providers should tailor the design, appearance and even the name of the facility to blend in with its surroundings.[567] Research demonstrates that even respondents indicating they would oppose a facility reported that they would be more likely to support it if certain conditions were met. Many of the conditions, such as adequate supervision of clients, constitute good care,[568] so that increasing the quality of the program and increasing neighborhood acceptance may be mutually reinforcing goals.

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[559] Yost; Beggs at 6-7. The witness, however, will have to face what may be a very hostile, stereotype based reaction. Beggs at 6-7.

[560] Dear at 295.

[561] Yost, Walt, "Housing Workshop Tackles Nimby Challenge", Sacramento Bee, N1, May 11, 1995; Beggs at 5. This is not only so that a provider can counter neighbors' arguments. An unprepared provider will actually undermine confidence by appearing incompetent. Dear at 295.

[562] Lozier at 42.

[563] Beggs at 5-7.

[564] Dear at 292.

Providers should also approach potential conflicts with full knowledge of the extent to which the Fair Housing Amendments Act and other laws protect a provider's right to site in a given location. Providers can subtly inform local governments of the existence of legal rights, and the consequences that could follow if they are violated, without adopting a confrontational approach.[569] This is probably preferable to immediately filing a suit, since it retains the possibility of siting the facility amicably and without the cost and delay of litigation. Suit can always be filed as a last resort.[570] In trying to gain approval for a site, providers should always remember that they will have to live in the neighborhood.

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[565] Beggs at 7; Rose, Joseph, B., "A Critical Assessment of New York City's Fair Share Criteria" Journal of the American Planning Association, Vol. 59, No. 1, 97, 98-99, Winter 1993.

[566] Dear at 295.

[567] Id. at 293. For example, designing the facility with a large waiting room may avoid conflicts about people congregating outside. Id.

[568] Id. at 316.

This last proposition should not lead providers to abandon plans simply because they fear vociferous opposition to a proposed project will translate into permanent enmity. In fact, as noted above, the evidence strongly suggests that community opposition tends to subside and is frequently replaced with acceptance after residents move in.[571] This suggests that while providers should do all they can to mollify neighbors at the outset, intransigent neighbors' minds can be changed later. For example, Conard House, a San Francisco non-profit, faced vehement opposition to the Hotel Delores, a proposed SRO. The Hotel however, was a good neighbor. It helped keep the streets clean and allowed community groups to hold meetings in its building. When Conard sought to open another SRO, neighbors of the Delores supported the project at public meetings.[572] This example is illustrative because in general, efforts to establish and maintain post-entry good relations, such as having clients perform community service, conducting open houses, and maintaining a communication with neighbors can be helpful.[573] Providers should remember, however, that if they are not good neighbors, they may lose the community support they have rather than changing opponents' minds.[574] Therefore, providers must take care to ensure that buildings are properly maintained, the facility is properly staffed and provides effective services.[575]

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[569] Yost; Beggs at 21; Dear at 297.

[570] Yost; Dear at 297. Moreover, filing suit against neighbors, as opposed to against the local government, should probably be avoided, since it risks turning them into martyrs and their behavior may be protected by the First Amendment. Yost; See discussion of Berkeley and Manhattan above.

[571] Hogan at 444; CRISP at 92; Arens at 239; Wahl at 254.

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[572] Beggs at 10.

[573] Dear.

[574] CRISP at 92. A little opposition at the outset may actually be a good thing if it helps increase the quality of services provided and the providers' sensitivity to neighborhood concerns. CRISP at 93; Dear at 288.

[575] CRISP at 92; Dear at 292; Lozier at 43. Lines outside and people sleeping or using drugs or alcohol should be prevented. Lozier.